H.R. 4957, TO AMEND THE RAILWAY LABOR ACT CONCERNING THE APPLICABILITY OF REQUIREMENTS OF THAT ACT TO U.S. AIR CARRIERS AND FLIGHT CREWS ENGAGED IN FLIGHT OPERATIONS OUTSIDE THE UNITED STATES

(103–69)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON

PUBLIC WORKS AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

OCTOBER 5, 1994

Printed for the use of the
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103D CONGRESS
2D SESSION

H. R. 4957

To amend the Railway Labor Act concerning the applicability of requirements of that Act to United States air carriers and flight crews engaged in flight operations outside the United States.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 12, 1994

Mr. RAHALL (for himself, Mr. BORSKI, Mr. DEFAZIO, Mr. COPPERSMITH, Mr. COSTELLO, and Mr. DE LUGO) introduced the following bill; which was referred to the Committee on Public Works and Transportation

---

A BILL

To amend the Railway Labor Act concerning the applicability of requirements of that Act to United States air carriers and flight crews engaged in flight operations outside the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPLICABILITY OF RAILWAY LABOR ACT PROVISIONS TO AIR CARRIERS AND FLIGHT CREWS OPERATING OUTSIDE THE UNITED STATES.

(a) FOREIGN COMMERCE.—Section 201 of the Railway Labor Act (45 U.S.C. 181) is amended by adding at

the end the following: "As used in this title, the term 'foreign commerce' includes flight operations (excluding ground operations performed by persons other than flight crew members) conducted in whole or in part outside the United States (as defined by section 40102(a)(41) of title 49, United States Code) by an air carrier (as defined by section 40102(a)(2) of such title).".

(b) EMPLOYEE.—Section 202 of such Act (45 U.S.C. 182) is amended by adding at the end the following: "As used in this title, the term 'employee' also includes flight crew members employed by an air carrier (as defined by section 40102(a)(2) of title 49, United States Code) while such flight crew members perform work in whole or in part outside the United States (as defined by section 40102(a)(41) of such title).".

MEMORANDUM

TO: Members of the Subcommittee on Aviation

FROM: Committee's Aviation Staff

DATE: October 3, 1994

RE: SUMMARY OF SUBJECT MATTER for Subcommittee on Aviation hearing on H.R. 4957, to amend the Railway Labor Act concerning the applicability of that act to flight crews of United States air carriers engaged in flight operations outside the United States to be held on October 5, 1994.

The subject of this hearing is Congressman Rahall's bill to amend the provisions of Railway Labor Act that describe the airline employees to which the Act applies. Under the Rahall bill, the Railway Labor Act would apply to "flight operations (excluding ground operations performed by persons other than flight crew members) conducted in whole or in part outside the United States...by an air carrier." In other words, the Rahall bill would establish that the Railway Labor Act applies to flight crew members employed by United States' airlines, regardless of whether the flight crew members are based and perform their duties within or outside of the United States.

This would mean that when the pilots or flight attendants of an airline select a collective bargaining representative, the airline would be obligated to bargain collectively with that representative over the terms and working conditions of overseas based employees in the class or craft, even if those employees do not work on flights serving the United States. However, supporters of the bill contend that the requirement of collective bargaining does not necessarily mean that foreign-based employees would be covered by the basic agreement between the union and the company. The result of collective bargaining could be an agreement that foreign-based employees would not be represented by the United States union and would not be covered by the agreement between the company and the union.

II. PRIOR PRECEDENTS AND PRACTICE

Before the Rahall bill was introduced, there were several efforts to have these provisions enacted as amendments to other legislation, such as appropriations acts and the Federal Aviation Administration Authorization Act. The amendments were supported by airlines' employee groups representing pilots and flight attendants, and opposed by some airlines. The supporters argued that the proposal was merely clarifying existing law, while the opponents argued that the proposal represented a change in existing law.

Only a few court cases have ruled on the issue of on whether the Railway Labor Act applies to employees of United States airlines whose work is wholly outside the United States. Most of the cases (including the most recently decided, Independent Flight Attendants v. Pan American World Airways, 923 F. 2d 678, (9th Cir. 1991) include findings that although Congress has authority to extend the Railway Labor Act to airline employees wholly outside the United States, Congress has not done so. In one of these cases, the Court further decided that because the Railway Labor Act did not apply to foreign-based employees, the Court did not have jurisdiction to enforce collective bargaining agreements covering purely foreign operations.

However, the case law has not been consistent on these issues. In a 1982 case (Local 553 Transport Workers' Union v. Eastern Airlines, 695F.2D 668 2nd Cir. 2 Circuit, 1982) the Court enforced a collective bargaining agreement covering employees outside of the United States.

Supporters of a Rahall-type bill also point out that regardless of court decisions, airlines and their employees have generally acted as though the Railway Labor Act extended to operations outside the United States; they have conducted collective bargaining and frequently reached agreement over the terms and conditions of these positions. Indeed, when United established flight attendant bases in London and Paris, United

informed employees in writing that the Railway Labor Act applied to these positions.

III. POLICY ARGUMENTS

As indicated, there has been considerable discussion of the pros and cons of applying the Railway Labor Act to foreign based flight crews of United States air carriers. Some of the main arguments advanced are as follows:

A) Global Economy

Supporters of covering foreign based employees argue that any other approach is inconsistent with the realities of the global aviation system. Most U.S. carriers now provide international service. The Railway Labor Act clearly applies to a flight between a U.S. point and a foreign point. Frequently, these flights continue to another foreign point. In the view of the supporters of the bill, it would not make sense to have employees on the first leg of the flight (between the U.S. and a foreign point) covered by the Railway Labor Act and employees on the second leg (continuing on from the first foreign point to another foreign point) not covered.

Supporters of a Rahall-type bill further contend that because the foreign operations covered by the bill are frequently an extension of flights to and from the United

States, extending the Railway Labor Act to these operations will help preserve collective bargaining stability and uninterrupted air service. The Railway Labor Act procedures are designed to require the parties to take all possible steps to resolve disputes without strikes or lockouts. This objective will be undermined if these procedures do not apply to foreign operations which are generally extensions of operations to and from the United States. For example, without the Rahall bill pilots might be free to strike at any time against the foreign operations of a U.S. carrier.

B) Application of U.S. Law to Foreign Nationals

Opponents of Rahall-type legislation argue that it is inconsistent with general principles of international law to have United States' law apply to a foreign national who is permanently based outside the United States and whose job does not involve flights to the United States. They contend that other U.S. labor laws, such as the Fair Labor Standards Act, do not apply outside the U.S. They further argue that we would not tolerate a foreign country applying its own labor laws to United States' citizens employed by foreign airlines in the United States. It is also argued that bilateral aviation agreements contemplate that each countries labor laws will govern employees in the country, including employees of airlines of other countries.

Supporters of Rahall-type legislation argue that foreign countries have in fact applied their labor laws to foreign flight crews (but not ground-based employees) working in the United States. They also point out that the Rahall bill does not cover ground-based employees of U.S. carriers in foreign countries; these employees, unlike flight crews, perform all their work in a single country, and that country is likely to insist that its labor laws apply. They further assert that some U.S. labor laws do apply outside the U.S. For example, a recent case held that the National Labor Relations Act applied to the crew of a U.S. ship operating in Hong Kong territorial waters, even though there was no intention for the ship to return to the United States.

C) Excluding Foreign Based Crew Members from Bargaining Agreements.

Opponents of the Rahall bill argue that under current law, the parties may, but are not required to negotiate on foreign operations. They argue that it is unfair to change the rules in the middle of the game to require negotiations. They also argue that if negotiations are required, Congress may have to legislate if the parties are unable to agree.

The supporters of the Rahall bill argue that enactment of

the bill would not necessarily mean that there would be collective bargaining agreements governing foreign based flight crew members. Rather, the Act would mean only that there would have to be collective bargaining over whether there should be a contract between the U.S. carrier and foreign employees. The airline and the union would be free to agree that foreign-based work could be subcontracted or contracted out, with the individuals performing this work outside the bargaining unit represented by the union. The unions supporting the bill assert that both American and United have reached collective bargaining agreements with their flight attendant unions that permit flight attendant work on certain purely foreign routes to be subcontracted to foreign nationals, not represented by a United States union.

D) Depriving U.S. Carriers of Business

Some United States charter carriers argue that the Rahall bill would interfere with their ability to obtain contracts to conduct wet lease (i.e. lease of aircraft and crew) operations for foreign air carriers. Some foreign carriers require that the carrier providing the aircraft and crew use flight attendants from the foreign carrier. The Rahall bill could lead to agreements or negotiations which would prevent a U.S. carrier from agreeing to use the foreign carrier's flight attendants.

H.R. 4957, AMENDING THE RAILWAY LABOR ACT CONCERNING THE APPLICABILITY OF REQUIREMENTS OF THAT ACT TO UNITED STATES AIR CARRIERS AND FLIGHT CREWS ENGAGED IN FLIGHT OPERATIONS OUTSIDE THE UNITED STATES

WEDNESDAY, OCTOBER 5, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10:08 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. OBERSTAR. The Subcommittee on Aviation will come to order. In today's hearing, the subcommittee will consider H.R. 4957, a bill introduced by our colleague, Congressman Nick Joe Rahall, Chairman, Surface Transportation Subcommittee to amend the Railway Labor Act that governs labor relations between airlines and their employees.

Congressman Rahall's bill would amend the RLA to establish that the act covers all flight crews of U.S. airlines regardless of whether the employees are based within or outside of the United States. The witnesses testifying today are in disagreement over whether the bill merely clarifies existing law and practice or whether the bill represents an unprecedented extension of the jurisdiction of the United States.

At the outset, it appears that there are difficulties in failing to apply the Railway Labor Act to overseas operations of U.S. carriers. A 1991 court case held that the RLA does not apply overseas. It went on to conclude that because the Railway Labor Act did not apply, the court had no jurisdiction to enforce a voluntary collective bargaining agreement which covered certain overseas operations of Pan American Airways.

This would seem to be an undesirable gap in the law. Also, as the Airline Pilots Association points out in their testimony, if the Railway Labor Act does not apply to purely overseas operations, it would mean a flight by a U.S. airline from, say, Chicago, to London, to Brussels, would be governed by one set of labor laws for the first leg from Chicago to London and by another set of regulations on the second leg, London to Brussels.

In today's global aviation era it does not seem to make sense that one collective bargaining agreement apply to one leg of an operation and a different one to another leg of an operation in a time when airline and aviation trading companies are seeking and working hard to harmonize their agreements, to harmonize their laws, to harmonize their inspection and certification requirements. It seems that the same drive for simplicity should apply to labor laws.

On the other hand, opponents of the Rahall bill raise questions about whether it is consistent with international law for U.S. law to govern foreign nationals working totally outside the United States for U.S. companies.

The testimony today, I think, will be very interesting, very challenging. We considered this matter as a proposal during a markup on legislation considered by the committee earlier this year and I felt that the complexity of the subject matter required a hearing before we could deal with it in a markup setting.

That was the genesis of today's hearing and our colleague from West Virginia who was good enough to withdraw his amendment in exchange for a hearing and extensive consideration of the proposal and that is what we are doing today.

I appreciate the participation and cooperation of our colleague from Pennsylvania, my very dear friend, Mr. Clinger, with whom I have spent about 11, 12 years, I think, together on the Committee on Economic Development, Subcommittee on Investigations and Oversight, Subcommittee on Aviation. And since this is the last hearing I think the subcommittee will hold this year, I just want to express, again, my deep appreciation and gratitude for his cooperation, his participation, but most of all for the very thoughtful suggestions that he has made time and again to improve the product of the committee and to have such a harmonious and constructive product of our committee year in and year out.

Mr. CLINGER. Mr. Chairman, I thank you very much for the kind words and let me tell you that it has been a real delight and a pleasure to work with you lo these many years. You have always been a totally fair and open Chairman. We have had a partnership, as you say, and I have been very grateful for that sense of comity and it has been a real pleasure to have you as a friend and as a Chairman.

Mr. OBERSTAR. Let us both remember the words of Adlai Stevenson. It is all right to hear praises of yourself so long as you don't inhale it.

Mr. CLINGER. Mr. Chairman, today's hearing deals with a technical, and as you have indicated, complex area of labor law. We all know that the Railway Labor Act governs labor relations between airlines and their employees in the United States. It is also well-settled that the Railway Labor Act applies to flights of U.S. airlines from the U.S. to a foreign country.

The question, as you have indicated today, is should U.S. labor law control activity at foreign crew bases and on flights between two points, neither of which are within the United States. Our colleague, Mr. Rahall, has introduced a bill that would answer this question in the affirmative.

This issue is becoming increasingly important as airlines expand into international markets and as airlines expand overseas, many

are establishing crew bases in foreign countries. Pilots and flight attendants often fly routes between their base country and another foreign country, never touching U.S. soil. The issue has also come to a head because of a recent Federal Court decision in the case of Independent Union of Flight Attendants versus Pan American World Airways, and in that case, the court decided the Railway Labor Act does not apply outside the United States borders. However, the court explicitly left open the question of whether Congress could amend the law to extend it overseas and therefore the issue is now squarely before us, having been told that Congress could legislate in this area.

I am fully aware of the importance of the Railway Labor Act in preserving peace in a very important transportation sector of our economy. I also appreciate the preference in the law for a system-wide representation and collective bargaining. Carving out the foreign operations of an airline would tend to undermine the system-wide principle that I think is principal in American law.

At the same time, I am acutely aware of the many potential problems with legislating in this area. Applying U.S. laws in foreign countries is bound to ruffle some feathers there and perhaps here. There do not seem to be many other cases where U.S. labor laws have been applied overseas. Doing so here could create situations where U.S. airlines are caught between the conflicting demands of U.S. and foreign authorities. So we do, indeed, have some difficult questions that deserve a full and fair hearing before this committee, so I appreciate, Mr. Chairman, your decision to move cautiously in this area, but I do look forward very much so to the testimony of the witnesses here today.

As you say, there are conflicting points of view on this thing and I think we need to have that conflict clearly spelled out in the hearing before us today, so, again, I join you in welcoming our dear friend and colleague, from the great State of West Virginia, Nick Rahall, who is the author of this legislation.

Mr. OBERSTAR. Mr. Rahall, we are glad to have you here, the Surface Transportation Subcommittee Chairman, and, again, I express my appreciation for your willingness to withhold on the bill until we have had an opportunity to have a full airing, which is the purpose of today's hearing and we certainly are going to have very conflicting testimony on it. But as the author of the bill, we await your interpretation and your explanation of its purpose and effect.

Mr. RAHALL. Thank you, Mr. Chairman.

Mr. OBERSTAR. The Floor is yours.

TESTIMONY OF HON. NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM WEST VIRGINIA

Mr. RAHALL. Thank you, Mr. Chairman. To both of my good friends, Mr. Oberstar and Mr. Clinger, I associate myself totally with the words of praise that you have heaped upon each other. You both are good friends, fellow committee colleagues. I have enjoyed very much my 18 years in the Congress working beside you, Mr. Chairman, some times on this subcommittee, but all the time on the full committee.

I just hope that at the start of the 104th Congress we are still here to heap praise upon each other and that the seating arrangements are the same, with you right there and with Mr. Clinger right where he is.

Both of you have laid the scenario very accurately about the situation involving the legislation I have introduced, and why we are where we are today. I appreciate very much, Mr. Chairman, your fairness, your commitment to your word, to hold these hearings and to be very fair with me from the time we initially discussed this legislation and your commitment to follow through on these hearings today.

I found that to be true of you throughout my 18 years here and I appreciate that fairness and commitment to your word very much.

I have introduced H.R. 4957 amending the Railway Labor Act to confirm and to clarify that the act applies to the U.S. carriers and their flight crew employees while operating to, from, or between points outside the United States.

The intent of the legislation is to protect the public interest in uninterrupted international air service and to protect the stability of collective bargaining relationships between U.S. carriers and their flight crew employees.

Historically, air carriers and labor organizations have understood that Title II of the RLA applies to U.S. air carriers and their flight crews when engaged in operations between the U.S. and foreign nations and the terms of the act also appear to cover these operations.

The trouble, Mr. Chairman, as you have so accurately described in your opening statement, is that the courts have, by recent decisions and rulings, decided questions about the reach of the RLA by relying upon a presumption against extraterritorial coverage. This has left all parties in a quandary about what is or is not lawful.

This reluctance to fully apply Title II of the RLA as it should be applied and as we have understood its application for many years is what brings us to this point today, to amend the act to effectively guide the parties' concern in dealing with overseas flight operations of U.S. carriers.

It is difficult to imagine, again, that it is, after all these years, not perfectly clear that overseas flight operations are natural extensions of a carrier's domestic operation, and are, in most instances conducted by the flight crews who serve interchangeably throughout the entire system.

My bill preserves the RLA's preference for system-wide collective bargaining agreements and permits such agreements to be enforced through the statutory dispute resolution process in accordance with the parties' intent.

This bill is intended to respond to both sides of the argument in an honest and forthright manner, while at the same time eliminating the big question mark every time there is a dispute that needs to be settled. Here is what the bill does precisely. It prevents either a carrier or one of its flight crew labor organizations from evading its obligations under the RLA by simply relying on geographical location of a particular operation. It prevents flight crew labor groups

from conducting unpredictable work stoppages against the U.S. air carrier's foreign operations.

It prevents an air carrier from firing or disciplining flight crew employees for engaging in union activities protected under the RLA merely because such employees are assigned, in whole or in part to the carrier's operations outside the U.S. The bill assures that the provisions in the bill apply only to flight crew employees, pilots and flight attendants who are the employees engaged in the actual operation and service aboard the aircraft as they traverse international boundaries; and finally, the bill requires, where appropriate, fair collective bargaining to establish wages and terms and conditions of employment for flight crews throughout an air carrier's systems.

Before I conclude, let me say, Mr. Chairman, what the bill does not do. It does not impose our labor laws on foreign countries. It does not affect our aviation agreements with foreign countries. It does not cover employees providing ground and related services for U.S. carriers exclusively in foreign countries, and it does not preclude the negotiation of wages and terms and conditions of employment tailored to flight crew members that perform overseas operations.

Mr. Chairman, that concludes my testimony. Again, I appreciate your having this hearing today and I would be glad to respond to any questions you or your subcommittee members have.

Mr. OBERSTAR. You have stated the case very well and very succinctly and I think clearly, but I do have a couple of questions, Nick. First, do you know of any foreign carriers that might have crews based in the U.S. as some U.S. operators are planning to do, have U.S. crews based in a country outside the United States? Do you know of any situation where a foreign carrier has its crew based in the U.S. and that their aviation laws apply to those crews?

Mr. RAHALL. Mr. Chairman, I am not cognizant of any such relationships so I cannot respond definitively.

Mr. OBERSTAR. One of the objections raised to the bill is that other countries would not—that the United States would not be happy about other countries applying their laws to their nationals in our country, therefore clearly they would not be happy with us applying our laws to our nationals living abroad.

Mr. RAHALL. Well, the legislation does not interrupt or interfere with any such agreements or relationships if they exist. So my bill is aimed just merely at ensuring that what we apply in many other sectors, I might add, of our relationships with unions abroad, it applies those same relationships under the Railway Labor Act.

Mr. OBERSTAR. Do you know of U.S. carriers that are planning to or already do have U.S. pilots and flight attendants to be based overseas?

Mr. RAHALL. Well, I have heard of some, Mr. Chairman. American, TWA and United. I believe American Airlines is one such carrier and I am fairly sure United has a similar base overseas and does honor agreements with their flight crews abroad.

Mr. OBERSTAR. Is the plan by or are there plans by U.S. carriers to establish a base outside the U.S., have U.S. pilots and flight attendants operate from that base to other places like, say, I could

imagine the Pacific, where you have the international date line, you have huge travel distances. It is 22 hours from the West Coast to Australia. That is a long haul. So I can conceive of a situation where a U.S. carrier might in that region of the world establish a base, have pilots and flight attendants operating out of there and then want to have those U.S. nationals covered by whatever the laws of whatever country they establish the base. Do you know of any such plans?

Mr. RAHALL. Yes, Mr. Chairman, I believe you will be hearing from some during the course of this morning's hearings and I would let them speak as far as their plans for the future, but I think it is pretty obvious, by looking at the itinerary, who that might be.

Mr. OBERSTAR. Your bill excludes ground crews who are not itinerant. They are stationed in place. They are nationals of the country where the U.S. carriers operate.

Mr. RAHALL. That is exactly right, Mr. Chairman. My bill does exclude those ground crews.

Mr. OBERSTAR. Thank you. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman. Thank you, Nick, for your testimony.

Some airlines, such as Tower Air, are going to testify later today and will state that your bill will increase costs significantly and may eventually put them out of business, which would result in losing the jobs that you are seeking to protect with this legislation. Do you want to respond to that criticism?

Mr. RAHALL. Well, you know, this act has not been changed, if I might say to you, Mr. Clinger, since 19—let me say when the RLA was applied to airline companies in 1936 there was barely a hint of the changes that have occurred in global operations as we know them today.

The economy, the global economy has changed operations of airline carriers dramatically. And any time you propose to update laws then, of course, you are going to encounter these charges that you are going to put certain operations out of business or that you are changing the rules of the game or whatever.

You know, what we are doing here is, again, an attempt to apply these requirements of the Railway Labor Act and recognize the collective bargaining agreements when they are an extension of domestic air operations, apply them to the foreign domiciles.

I don't believe that the charges we are going to put any airline out of operation are entirely accurate. Certainly, I think we can live with the fairness of this legislation and I don't believe those charges are accurate.

Mr. CLINGER. On the witness list we do not have representatives of any major U.S. airlines testifying today. Do you know what if any position they have taken on your proposal?

Mr. RAHALL. No, sir, I don't.

Mr. CLINGER. Okay.

Mr. RAHALL. I do know the one I referred to earlier, American Airlines, I believe does already recognize the effect of what my legislation would do.

Mr. CLINGER. What would be your view if, as apparently is going to be the testimony today, the impact would be primarily on the

smaller or the charter airlines? What would you think about having this apply only to the major airlines, in other words, exempting those that could be adversely affected?

Mr. RAHALL. Well, we could look at that later on. I would not be averse to looking at that and if there were some exemptions of that nature that might be worthwhile, sure, I would consider it.

Mr. CLINGER. Thanks very much.

Mr. OBERSTAR. Mr. Geren.

Mr. GEREN. No questions.

Mr. OBERSTAR. Nick, thank you, very, very much for your testimony.

Mr. RAHALL. Thank you, Mr. Chairman. Again, I appreciate your holding these hearings today following through on your commitment.

Mr. OBERSTAR. Please join us here.

Mr. RAHALL. I would expect to, yes.

Mr. OBERSTAR. Our next witness is Captain J. Randolph Babbitt, President of the Airline Pilots Association, who is a known and widely respected spokesman on aviation.

Captain Babbitt, welcome. So glad to have you here this morning. Your assembled team. You have got—would you please introduce your associates.

TESTIMONY OF CAPT. J. RANDOLPH BABBITT, PRESIDENT, AIRLINE PILOTS ASSOCIATION (ALPA), ACCOMPANIED BY DUANE WOERTH, FIRST VICE PRESIDENT, ALPA, AND RUSSELL BAILEY, LEGAL DEPARTMENT, ALPA

Mr. BABBITT. I sure will. Good morning, Mr. Chairman and Members. As you indicated, I am the President of the Airline Pilots Association and with me today is Captain Duane Woerth and also with me is Russ Bailey. Duane handles most of our international affairs and is a director of ALPA as well. I speak today——

Mr. OBERSTAR. You also have two other associates there behind you kind of hovering in the shadows trying not to be noticed, but Mr. Hallisay and Mr. Baker are there and they are hard workers, as well as Brendan Kenny, your counsel, and I know they are very shy, retiring people, but they should be mentioned, their presence should be noted here.

Mr. BABBITT. I thank you for pointing that out. They are trying very hard not to be noticed, yes, sir. I come before the committee today and appreciate the opportunity, but I also speak not only as President of the Airline Pilots Association, but in my position as Vice President of the Transportation Trades Department within the AFL–CIO. I think you are also aware I served as a Member of the Commission to Ensure a Strong and Competitive Airline Industry.

I indicated that Duane is with me. He has the responsibility of overseeing the development of all of our policies on international issues, and as I introduced Russ earlier, I failed to point out that he is with our legal department.

ALPA represents 42,000 airline pilots at 36 different airlines, many of which are increasingly engaged in operations outside of the United States. And we, again, very much appreciate the opportunity to appear before this subcommittee to discuss and present ALPA's views on H.R. 4957.

I also would like to commend Congressman Rahall and his colleagues for sponsoring and introducing this bill. It is a bill that we think very much of. The bill would confirm that the Railway Labor Act does apply to air carriers and their flight crews; specifically, their pilots and flight attendants, while they are engaged in international operations. We believe the measure is a timely effort to dispel any confusion about the application of the Act and collective bargaining agreements to the international operations of U.S. airlines.

U.S. airlines that perform flying outside of the United States have traditionally established the terms of employment for their flight crew members through collective bargaining agreements negotiated under the Railway Labor Act. These carriers and their employee representatives have long recognized that they cannot create an efficient global operation and maintain at the same time stable labor relations if the application of the act and the collective bargaining agreements depend on the accident of geographic location of their aircraft as they navigate through global airspace.

Thus U.S. airlines and their labor unions have proceeded as if the Act and their labor contracts follow their aircraft as well as their flight crews in both domestic and international operations regardless of their point of operation at any given moment.

This historic understanding only makes sense. A crew of United Airlines, I think you used this as an example a little earlier, might have an international trip that originated in Chicago with intermediate stops in New York, Paris, Frankfurt. The application of one contract and one set of labor laws to this flight operation would promote stable labor relations and the continued growth of U.S. airlines. As a result, United, Delta, U.S. Air, Northwest, and American Airlines, among many others, have all negotiated pilot contracts that cover all flight operations worldwide.

Foreign airlines have followed this rule as well. A Lufthansa pilot, for example, continues to be governed by the working conditions established under German labor law when his airplane flies passengers or cargo to the United States or from a U.S. gateway city to a point in a third country beyond the U.S. or Germany.

As the United States seeks to maintain a competitive edge in the expanding global economy, U.S. airlines will be increasingly called upon to serve the Nation's needs by carrying passengers and cargo between points outside of our country. In the last decade, U.S. airlines have vastly expanded their international route systems. With improved technology and diminished regulatory barriers, U.S. airlines have expanded their so-called beyond operations flights from one foreign destination to another so as to integrate the global networks that are anchored within the United States.

As the flight operations of United States carriers become more global in scope, airlines and their employees have devoted greater attention to negotiating contract terms applicable to flight operations outside the United States.

The international operations of U.S. airlines are thoroughly integrated into their domestic and transnational operations and we do not believe that Congress ever intended to exclude these operations from the system of collective bargaining under the Act. A handful of court cases, however, has held that the Railway Labor Act does

not cover flying that takes place between two foreign points. These cases have created needless doubt about the embrace of the Railway Labor Act and threaten to undermine the fundamental principles of the Act itself.

First, the Act expresses a strong preference that classes of employees such as pilots or flight attendants be represented on a system-wide basis. In other words, when pilots of an airline select a representative for collective bargaining purposes, that representative represents all the pilots of that airline. The court case at issue would run contrary to this principle. H.R. 4957 would preserve the Act's preference for system-wide collective bargaining agreements.

Second, these court cases also undermine the central purpose of the Railway Labor Act: to prevent the interruption of vital transportation services by requiring airlines and their employees to negotiate labor agreements through collective bargaining and to resolve disputes over labor contracts through binding labor arbitration.

Without a clarification from Congress, these cases call into question whether both the pilots and flight attendants employed by U.S. carriers are, in fact, governed by the Act's restrictions on strikes and other forms of labor unrest while they are engaged in international operations, and whether flight crew employees of U.S. airlines can negotiate and enforce collective bargaining agreements covering international operations of U.S. air carriers as they have historically done for years.

H.R. 4957 eliminates the confusion created by these cases by confirming that the Railway Labor Act does, in fact, cover flight crews employed by U.S. airlines who happen to be based overseas while engaged in flying outside of U.S. airspace. The proposed amendment has been narrowly drawn to accomplish specifically that purpose.

First, the proposed amendment only applies to U.S. air carriers, a term carefully defined in U.S. transportation laws. Thus it does not apply to flight crews of foreign carriers or to employees of any other form of carrier as specified under the Railway Labor Act.

Second, the proposed amendment only applies to flight crew employees; that is, specifically pilots and flight attendants who are employees engaged in the actual operation and service aboard the aircraft as they traverse international boundaries engaged in global operations.

The amendment leaves untouched the labor relations arrangements applicable to foreign nationals employed by U.S. air carriers to provide ground service and related services at foreign airports. Such ground service employees are frequently represented by unions in their home countries under the laws of those countries and under this proposal we seek no change.

Third, the proposed amendment does not affect the ability of U.S. airlines and their flight crews to adopt special provisions governing international operations or foreign-based flight crews through collective bargaining under the Act. For example, several U.S. airlines have reached collectively bargained agreements that apply different wages and work rules to flight attendants hired overseas to perform foreign flying. The proposed amendment is designed to pre-

serve and strengthen the ability of U.S. airlines to adopt such solutions through the use of collective bargaining.

Finally, the proposed amendment does not interfere with the rights of foreign states. The United States has a substantial interest in the uniform application of its labor laws to the highly mobile flight crew operations of our own carriers. Foreign states by contrast have little if any interest in the application of their labor relations laws to such U.S. air carrier crews.

In this regard, the proposed amendment tracks the long-standing application of U.S. labor laws to crew members on U.S. maritime vessels. And in that arena, the U.S. has declined to assert jurisdiction over labor relations on foreign-flag vessels even when they are operating in U.S. waters. On the other hand, the U.S. has asserted, with court approval, jurisdiction over labor matters on U.S. flag vessels when those vessels are operating or even based in foreign waters.

That concludes our oral testimony and I and my colleagues would be happy, Mr. Chairman, to answer any questions that you or the other Members might have with regard to our views.

Mr. OBERSTAR. Thank you very much. Again, you have given us a very thorough treatment of the subject. I do have some questions I would like to raise. The bill would cover foreign nationals employed by U.S. carriers as pilots or flight attendants.

Mr. BABBITT. If the collectively bargained arrangement is within the scope clause, and this is probably a good time for me to make a clarification here. I think there has been some misunderstanding of the word "scope" and "scope clause." And I want to carefully distinguish for the committee that a scope clause is typically a labor term used within a collective bargaining agreement that describes the boundaries of the work.

Now, the applicability of that contract is something for the law to interpret. But as for what is collectively bargained, for example, quite often we have agreements for pilots that would cover the scope of flying, be limited perhaps to jet aircraft. All of the pilots on the seniority list of the carrier, any jet flying that was going to be done, would be done by only the pilots on that seniority list.

Other types of flying could be allowed to be flown by people not on the list. That would be covered in a scope clause. Now, we would expect the applicability of that contract and the clause to be covered by the Railway Labor Act. So if the scope clause did, in fact, include that anyone hired to do flying by a particular carrier should be covered by the agreement, that would cover everyone, including foreign nationals that were hired.

Mr. OBERSTAR. Okay. My question, obviously, was hypothetical. Do you specifically, do you know of any agreements with U.S. carriers in which scope clauses include foreign nationals?

Mr. BABBITT. Well, generally the scope clauses include references to the flying, not to the origin of the individual who was hired to do the flying, so it wouldn't really make any difference to the contract who you hired. If you wanted—in the example I gave, to hire someone to fly a jet for you, it wouldn't make any difference whether that person was a foreign national or a U.S. citizen.

Mr. OBERSTAR. Now, opponents of the legislation will argue that the bill, if enacted into law, would be inconsistent with general

principles of international law for U.S.—because it would create a condition in which U.S. law would govern employees who are foreign nationals and work totally outside of the United States.

Mr. BABBITT. I am going to suggest that Duane might help a little here with an answer. Duane, as I said, works with a lot of the policies. Duane.

Mr. WOERTH. Mr. Chairman, our anticipation, as in everything with respect to the Railway Labor Act, what can only be enforceable is anything we agree to with our managements. In other words, all we want out of any of these bills is that anything that we bargain for is enforceable and cannot be avoided simply because we are out of the country or have a foreign domicile.

Mr. OBERSTAR. You really want to redress the Pan Am case.

Mr. WOERTH. That is correct, sir. If it was not for that case in January of 1991, we would not be before you today because for many decades, as long as there has been international aviation, we have bargained in good faith with our employers and have provided for all international flying, including foreign domiciles, no matter who is the employee, and this has not been a problem heretofore.

Mr. OBERSTAR. I asked Congressman Rahall earlier whether he was aware of, and I ask you the same question, any foreign country that applies its labor laws to its employees operating in the United States. Are there any foreign carriers that have flight attendants and pilots based in the U.S.?

Mr. WOERTH. Yes.

Mr. OBERSTAR. And their law applies to those nationals?

Mr. WOERTH. That is correct.

Mr. BABBITT. There are several examples. JAL, Korean Airlines, they have crew bases here and they are covered by the contracts and the labor laws of their countries, and their carriers.

Mr. OBERSTAR. Thank you. I have other questions later. I will defer to my colleagues. Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman. Thank you, Mr. Babbitt. In the early 1980's, as I am advised, a dispute arose between TACA, which was the airline of El Salvador and ALPA, over the movement of a crew base from New Orleans back to El Salvador.

TACA tried to claim that the law of El Salvador applied to the New Orleans crew base because it was a Salvadorian airline at that time. Since ALPA claimed that U.S. law should apply and the Federal Court agreed with you and held that U.S. law applied because the crew base was located in the U.S., shouldn't, I guess the question arises shouldn't the converse of that also apply?

In other words, if the U.S. airline establishes a crew base in a foreign country, shouldn't the foreign law apply to that? Isn't there an inconsistency?

Mr. BABBITT. Well, there is, perhaps I can shed a little light and Russ may want to add to it. In that case the precedent was set much earlier or the floor was set for this question much earlier when the pilots proposed to be organized under the Railway Labor Act and did so without objection from the carrier. So they organized and had elections conducted in accordance with the Act and the Airline Pilots Association became their collective bargaining representative.

Later on, when the corporation chose to move the domicile or attempted to move the domicile, it was only then that they came up with a novel theory that, well, actually our law should have applied. They could have raised that point considerably earlier in time and perhaps with a different outcome. Russ.

Mr. BAILEY. I think Captain Babbitt has hit the central issue, explained basically what happened there. There is a little more context. The TACA case has to be viewed in the context in which the dispute arose. In 1949, when TACA originally began serving the U.S. operations, it only had one domicile, and for some reason, it decided that domicile was going to be here in the United States in New Orleans and all of TACA's pilots were domiciled there and almost all of them were U.S. citizens.

In 1968 when ALPA was elected to be the collective bargaining representative of the airline, at that point the airline did not contest the election. Had it done so, some of these fine legal issues may have come to a head, but the fact is there was no contest. And so the peculiar circumstances of TACA are unlikely to arise again.

Eventually, the airline decided that it wanted to move the domicile back to El Salvador and succeeded in doing so in spite of the case that you are referring to. And all that happened, in that case, was simply since there was a contract at that point and TACA had agreed to enter into that contract, all the court was concerned about was whether or not that contract should be enforced and it determined to do so and it was only because of the unusual circumstances. To my knowledge, there is no airline that has a similar relationship or similar setup to what TACA did at that time.

Mr. CLINGER. It is a unique situation.

Mr. BAILEY. Very unique.

Mr. CLINGER. We talked about the scope clause and so forth. Under the Rahall bill if a U.S. airline established a crew base in a foreign country and hired citizens of that country to fly routes from that country, would U.S. labor law apply?

Mr. BABBITT. Let me back up if I could. In the negotiations of the scope clause, the company might very well say to the pilots covered under their U.S. agreement, we would like to hire people in other countries and not have them covered by this agreement. We would like them to be outside of the scope clause of this agreement. And they could decide then and there and negotiate over that issue.

The question that we concern ourselves with with Congressman Rahall's bill is once that agreement is made, is it binding. If the agreement is that, yes, all flying done by this carrier anywhere in the world will be done by pilots on the seniority list, then the answer would be, yes, they would have to be covered by the agreement.

Mr. CLINGER. But what you are saying, all the law would do is make it possible to negotiate on that issue. It would not mandate that would be the case.

Mr. BABBITT. That is correct.

Mr. CLINGER. What would be binding would be what was negotiated by the parties.

Mr. BABBITT. Yes, sir and it is the process that we are focused on.

Mr. CLINGER. There have been allegations that this bill is an attempt by ALPA to legislate on matters that currently you are involved in, negotiations between ALPA and FedEx. What effect would this legislation have on your negotiations with FedEx?

Mr. BABBITT. Well, the direct answer to the question is little or none. The scope clause will just be the subject of collective bargaining. But they give us credit for a great deal of foresight since we have been trying to bring their bill forward since 1991, more than two years prior to the time we became the collective bargaining representative for Federal Express pilots.

Mr. WOERTH. If I may add to the answer, Congressman, we fail to see any difference in this instance with any other airlines ALPA represents that for decades negotiated the same provisions, whether that be United Airlines, Northwest Airlines. We have a complete record, Flying Tiger Airlines. We see no difference in the bargaining in this instance than in any other instance of the carriers we represent. But it is all, as you clearly understand, a result of the bargaining. We are not mandating the result by any other searches for one.

Mr. CLINGER. Just one last question. The testimony later today is going to represent that this will work a hardship on, particularly, chartered and smaller operators and could result in loss of jobs, closure of the airline, et cetera. How would you feel about a waiver or some sort of a condition that would protect that kind of problem if it turns out to be a problem?

Mr. BABBITT. Let me ask a question. I don't have intimate knowledge of the agreement of which you speak, but if the scope clause allowed that the carrier could engage in periodic outside hirings on a charter-type basis, then it wouldn't result in any job losses.

On the other hand, if it is their intent to employ the people they hired to do the flying they negotiated for, then, again, there won't be any job losses. I fail to see where the job losses come from in this situation.

Mr. CLINGER. So what you are saying is you would be opposed to any waiver based on size or anything of that sort.

Mr. BABBITT. I would let the collective bargaining arena establish the necessary waivers, and that goes on all the time. We make all sorts of exceptions in the currently existing labor agreements in force today. We make any number of exceptions to allow carriers the flexibility to seek and conduct business that is most economically efficient for them.

Mr. CLINGER. Thank you, Mr. Babbitt. Thank you, Mr. Chairman.

Mr. OBERSTAR. Before I recognize Mr. Rahall, may I just intercede here briefly and follow up on Mr. Clinger's question? It occurred to me in your response to my question that JAL and Korean Airlines have crews based in the U.S. Has the application of Japanese law to those crews of those carriers, of their carrier, for example, ever been challenged in U.S. court?

Mr. WOERTH. Not to our knowledge, Mr. Chairman. And one thing you should also know, that a great deal—many of those pilots, in particular, are neither Japanese or Korean. There is a very large number of expatriate pilots. They may be from New Zealand, Australia, Canada, whatever, hired by these airlines and domiciled

together with Japanese in the United States. Principally, Anchorage, Alaska.

Mr. OBERSTAR. That is very interesting.

Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman. Thank you very much, Captain Babbitt, for your testimony.

Are there not instances where there is subcontracting out to foreign nationals where the union agreements would not apply in order to satisfy perhaps special circumstances when flying into an area like, as an example, the pilgrimage to Mecca? Aren't there agreements or rather subcontracting leases that American and perhaps United employs in order to respond to charges that special circumstances like that should be addressed.

Mr. BABBITT. There are some cases like that and they are covered by the collectively bargained agreements. There are also some cases where as a condition of a bilateral agreement and, again, the accommodations are made in the collective bargaining agreement is to how that type of flying operation is to be conducted.

Mr. RAHALL. So enactment of this legislation would not in any way affect bilateral treaties that the U.S. has entered into.

Mr. BABBITT. Not at all. We see no case where there would be any effect.

Mr. RAHALL. Assuming enactment of the legislation, would there be any dramatic changes and, if so, what are they upon wages and working conditions of flight crews aboard U.S. aircraft working in foreign operations?

Mr. BABBITT. Well, the current flying that is done, if it were to be covered by this scope clause, which would define the work being covered by the agreement, would have it in a pay scale. We have exceptions right now in any number of agreements that specify different pay, different restrictions, different work rules. Typically, international flight crews, for example, your crews that we are speaking of, in many of these cases have longer duty times to allow for the, obviously, long-haul type flying that they do.

It is a different type of flying. It doesn't have as many take-offs and landings so it doesn't have the same duty restrictions. Even the Federal laws that apply to the operation recognize there is a difference between domestic flying and international flying and I would point out while we are on that subject that I don't think anyone has suggested for a moment that the Federal air regulations cease to follow the aircraft as it works its way around the world.

It is very clear that the crew is certified operating a U.S.-certified aircraft for its entire operation, and in most cases flying over routes that came about from bilateral U.S. negotiations, so I almost see that not passing the bill that you proposed would be to allow an exception that isn't otherwise tolerated in any other arena.

Mr. RAHALL. How would you respond to charges I am sure we are going to hear before the morning is out that we are changing the rules in the middle of the game?

Mr. BABBITT. I don't see that at all. I don't think that I would agree with that whatsoever. I think the rules have long been established. I think we have got 40 or 50 years of precedent and only recently because of the ninth circuit ruling has this come into question and I think, again, we are mixing apples and oranges to some

degree when we talk about the scope of the law, the applicability of the law itself versus the scope of negotiations of a particular contract and I would like to segregate those.

Unfortunately, we use the term, "scope clause," to define the work to be covered by a collectively bargained agreement, and in here we are talking more in reference specifically to H.R. 4957. We are talking about the applicability of those clauses in the contract once the contract has been agreed upon by both sides. Where does that contract now apply and we are saying it continues to apply everywhere that you employ those people.

Mr. WOERTH. May I add a comment?

Again, I would like to focus on our principal goal. It is not to change the wages and working conditions or change the rules in the middle of the game, but we do fully intend to have clarified, what we always thought we had for many years, that when we did bargain in good faith for our system under the Railway Labor Act, which anticipates all the classes of craft, all the workers inside that class and craft are covered; that I do not have to wonder when one day I land at Tokyo and the next day I am in Korea and then after that I am in London that every day I am under a different law or that my contract is not enforceable.

We would anticipate when we bargain with our employers and we fly on U.S.-certificated aircraft under U.S. route authority and U.S. FAR laws, then that is our work environment, and these contracts are enforceable everywhere we go. We also anticipate when we negotiate with new employers that we anticipate they are negotiating in good faith, are not anticipating setting up flights of convenience or trying to find some way to circumvent by U.S. labor law simply by where they domicile their pilots. This is an important distinction. I think we need to raise interest in understanding the difference in the airline industry and the classes of craft of work we describe here.

Flight deck crew members were not in a factory or office building day after day, week after week in a foreign country. A domicile for a pilot or for a flight attendant is nothing more than a mailbox where he receives his mail. It could be anywhere and you perform your work on that U.S.-certificated aircraft.

When we are discussing international aviation or international airspace over foreign countries, you stay with that aircraft, that is where you perform your work, and I think it is important for the committee to understand there is a very distinct difference from how we perform most types of work. We are not talking about our ground service crew members. We are not talking about management employees. We are not talking about the fuelers or bag loaders. We are talking about the flight deck crew members who stay with their aircraft. That is where they perform their duties and they should be protected by everything that they negotiated for and we don't think employers should try to circumvent U.S. law simply by establishing a domicile, as I said, which is a mailbox. That is all it performs for a pilot or flight attendant. That is where you start or end your trip. You may have nothing to perform on your trip except for the first and last 15 minutes of a month's worth of work at that domicile. That is an important distinction.

Mr. RAHALL. We are not talking about anything precedent-setting here, are we? Don't we have parallel situations, for example, on U.S. ships under U.S. flag?

Mr. WOERTH. The law follows the flag.

Mr. RAHALL. And labor agreements entered into follow the ship.

Mr. WOERTH. That is correct.

Mr. OBERSTAR. Before I recognize the gentleman from Maryland, the gentleman from Texas.

Mr. LAUGHLIN. Thank you, Mr. Chairman. I have five questions I would like to have submitted for the record, too, to not only this panel but the next three panels. They have to do with a number of topics being discussed and I think would be more fairly answered by submitting answers rather than hitting the witnesses cold and blind.

I would make the observation that recently I was on a flight from Moscow to Frankfurt with Delta Airlines and the captain on that flight told me he had—he lived in Germany, but he had to fly to the U.S. and he had to fly back to Germany to start his duty and he did not pilot the plane across the Atlantic and that just seemed not only absurd, but ridiculous and a waste of his time and somebody's money and that situation certainly needs to be addressed, but, Mr. Chairman, I would give you my questions if the panel and the succeeding ones can answer them.

Mr. OBERSTAR. Without objection, the questions will be submitted to the panels, the responses sent to Mr. Laughlin and to the subcommittee.

Mr. Gilchrest.

[The information received follows:]

AIR LINE PILOTS ASSOCIATION
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October 14, 1994

Congressman James L. Oberstar
Chairman, Aviation Subcommittee
Committee on Transportation and
Public Works
Room 2251
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Oberstar:

During the October 4, 1994, hearings on H.R. 4957, Congressman Laughlin asked ALPA to submit for the record written responses to several questions. Those responses are as follows:

Question 1: How can this legislation be enforceable without reopening bilateral aviation treaties made with other countries?

Response: H.R. 4957 simply would not require the United States to reopen any bilateral aviation treaties. The bill does not apply to ground based employees of U.S. airlines who perform their duties within a foreign country. Rather, it applies only to the flight crews, that is, pilots and flight attendants aboard aircraft engaged in operations between foreign countries. Most major U.S. airlines have, and have had for years, collective bargaining agreements that cover the wages and working conditions of those flight crew members. No foreign country has ever claimed that a bilateral aviation treaty covers those matters. Conversely, the United States does not claim that existing bilaterals cover how wages and working conditions are set for the flight crew aboard foreign aircraft that operate between the United States territory and a third country.

Question 2: If the United States will not allow foreign nations to try to extend their labor laws here, why should foreign countries do so for the U.S.?

Response: As shown in response to Question 1, the United States does permit the wages and working conditions of flight crews of foreign airlines operating to and from the United States to be established pursuant to foreign labor law.

Question 3: Why should this legislation be enacted if other labor laws have not been applied overseas, such as the Fair Labor Standards Act?

Response: There is no question that Congress maintains both the discretion and the authority to apply American labor and employment laws to the international operations of American companies in order to promote national labor and employment policies. In fact, Congress has long exercised that authority to impose a wide variety of labor and employment laws to the international operations of U.S. companies to the extent necessary and appropriate to further significant national policies.

Accordingly, the National Labor Relations Act, 29 U.S.C. §141 et seq. fully applies to the overseas operations of American companies that are engaged in foreign commerce, see NLRB v. Dredge Operators, Inc., 19 F.3d 206 (5th Cir. 1994); Alcoa Marine Corp., 240 N.L.R.B. 1265 (1979); the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. applies to the international operations of American companies, see 29 U.S.C. §623(f)(1); and, following the Supreme Court's decision in EEOC v. Arabian American Oil Co., 499 U.S. 244 (1991), Congress amended Title VII of the Civil Rights Act to prohibit employment discrimination against U.S. citizens based upon race, gender, national origin, color and religion in the international operations of American employees, see 42 U.S.C. §2000e (1994).

In addition, the Employee Retirement Income Security Program, 29 U.S.C. §1001 et seq., applies to all pension plans covering employees engaged in the international operations of American companies with narrow exceptions, see 29 U.S.C. §1003; and Congress also designed the Americans With Disabilities Act, 29 U.S.C. §12101, to cover nearly all international operations of U.S. companies, including foreign subsidiaries of U.S. companies operating exclusively in foreign countries, see 29 U.S.C. §12112(c).

In each of these instances, Congress has enacted a narrowly-drawn application of U.S. labor or employment law to the international or foreign operations of U.S. companies in order to serve significant national interests. When Congress brought the fledgling airline industry under the Railway Labor Act in 1932, however, it did not directly consider the extraterritorial application of the Act to U.S. airlines. In an increasingly global and competitive airline industry, we submit the national interest in promoting stable labor relations at U.S. airlines now calls for a congressional confirmation that the Act governs pilots and flight attendants who happen to be engaged in the international operations of U.S. airlines.

Question 4: Would this legislation ultimately lead to a conflict in U.S. and foreign laws?

Response: The proposed amendment is narrowly drawn to avoid any conflict with foreign laws. The United States maintains a substantial interest in the uniform application of its labor relations laws to flight crewmembers engaged in the highly-mobile operations of U.S. air carriers. Foreign states, by contrast, have little, if any, interest in application of foreign labor relations laws to flight crews who are employed by U.S. airlines and who perform solely in-flight services for U.S. airlines.

For similar reasons, both the United States and foreign governments have traditionally declined to apply domestic employment laws (including labor relations laws) to foreign flag carriers at sea, explaining that the "law of the flag supersedes the territorial principle." Lauritzen v. Larsen, 345 U.S. 571, 585 (1953); see McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 21 (1963) (declining to apply U.S. labor laws to foreign seamen employed on vessels registered under a foreign flag); see also Restatement (Third) of Foreign Relations Law §502(1)(a) ("The flag state is required to exercise effective authority and control over the ship in administrative, technical, and labor matters.")

In this regard, the proposed amendment is entirely consistent with the application of this country's laws to U.S. maritime vessels engaged in international operations. The Supreme Court has emphasized that "[p]erhaps the most venerable and universal rule of maritime law ... is that which gives cardinal importance to the law of the flag." Lauritzen, 345 U.S. at 584. In general, this "flag of the ship" doctrine provides the government that licenses a maritime vessel with continuing legal jurisdiction over the vessel and its employees in both domestic and international waters. The flag of the ship doctrine has been supported both on territorial grounds, see United States v. Flores, 289 U.S. 137, 155-56 (1933) (explaining that the law of the flag supersedes the territorial principle because the ship "is deemed to be a part of the territory of that sovereignty [whose flag it flies], and not to lose that character when in navigable waters within the territorial limits of another sovereignty") and pragmatic grounds, see Lauritzen, 345 U.S. at 585 (explaining that "there must be some law on shipboard, [ ] it cannot change at every change of waters, and no experience shows a better rule than that of the state that owns her").

Question 5: Who's law would prevail?

Response: As we explain in our answer to Question 4, we do not believe that the proposed amendment would trigger any conflict with foreign laws – just as the extraterritorial application of the other U.S. labor and employment laws have not triggered any such conflict. Indeed, as we discussed at the hearing on the proposed amendment, U.S. airlines and their labor unions have negotiated numerous collective bargaining agreements governing international operations and have historically proceeded as if the Act and labor contracts are fully applicable to flight crews engaged in flying outside the United States. Throughout this long history, no foreign government has ever attempted to apply its own labor relations laws to the flight crews of U.S. airlines operating in international airspace.

To the contrary, in the only instance known to us in which a foreign government considered the application of the Railway Labor Act in this context, England's High Court of Justice declined to apply British labour laws to London-based flight attendants employed by United Airlines because the court concluded that flight attendants were governed by the Railway Labor Act and the collective bargaining agreement negotiated under the Act. Gately v. United Airlines, Inc., Case No. CH 1991-G-2740 (May 10, 1991).

Sincerely,

J. Randolph Babbitt, President

JRB/jg

Mr. GILCHREST. I would like to do the same, Mr. Chairman. Submit my questions to the panel so I can get a more thorough answer, because we do have a vote and we don't have much time to ask those questions, and I may not come back after the vote, although I will try.

I ask one very quick one. This is rather intriguing to me, and I am just getting into this topic, but if—are there Japanese airlines that fly within the United States from one city to another in a similar manner that there are American Airlines that fly from different cities in Europe without landing on a U.S. air field? Is there a foreign carrier that actually flies, let's say, within North America, for example, without touching Europe or Japan or Asia?

Mr. BABBITT. Flying between city pairs within the United States would be cabotage, which is forbidden by all nations, so, no, sir, there aren't any operations within the States. That doesn't mean there are not crews based here who fly co-terminal operations between different States or originate their flying for Japanese airlines or other carriers from Los Angeles, San Francisco, and so forth. Their domicile is a U.S. city, but they are there covered by, paid by, and operating under a contract negotiated in Japan and covered by Japanese labor laws and we have made, our government has made no effort that I am aware of——

Mr. GILCHREST. But we are different in that respect from other foreign carriers as far as who those foreign carriers can hire.

Mr. BABBITT. No, sir. Their option of hiring remains solely theirs. We don't require that they hire U.S. citizens or expatriates.

Mr. GILCHREST. Could they if they wanted to?

Mr. BABBITT. Yes, sir.

Mr. GILCHREST. If they are flying in North America, could they exclusively hire Americans as opposed to native Japanese.

Mr. BABBITT. Whatever agreement they might have with their unions, I am not familiar necessarily with the intimate details of their labor contracts. I think they can hire pretty much who they had made some agreements with.

Mr. GILCHREST. I was just trying to make some comparisons with what we are trying to negotiate here and what is a common practice with airlines around the world.

Mr. BABBITT. I think the practice is pretty much standard. I don't see any difference between what Japanese airlines have done and what we have historically done here, but for a question raised by a ninth circuit decision.

Mr. GILCHREST. I see.

Mr. OBERSTAR. The gentleman may return and ask questions further, but we have just under three minutes remaining on this vote so we are all going to have to vote.

We will recess and return quickly.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting. The Chair will simply make a general apology for delaying hearings all during the course of today's hearing because we do expect our recorded votes and they are unpredictable and we, again, apologize. I won't do that from here on in after every vote. Everybody will have to understand that we are going to be interrupted by Floor votes.

Captain Babbitt, would it be sufficient to amend the Railway Labor Act to give Federal Courts jurisdiction to enforce provisions of collective bargaining agreements that govern the operation of flight crews of U.S. carriers anywhere in the world?

Mr. BABBITT. I am going to defer that to Russ.

Mr. OBERSTAR. This is a technical legal question. To give Federal Courts jurisdiction to enforce provisions of collective bargaining agreements just that much.

Mr. BAILEY. Your Honor, I don't believe it would be sufficient to do that.

Mr. OBERSTAR. You don't need to say that. This is not in the court system. Chairman will suffice.

Mr. BAILEY. This is not where I usually practice. Thank you, Mr. Chairman, sorry.

Mr. OBERSTAR. That was a great reflexive action.

Mr. BAILEY. I do not believe it would be sufficient to do that, Mr. Chairman. The Railway Labor Act is a whole package. The Railway Labor Act determines who comes to the bargaining table. It determines what rules apply. It sets up a whole framework, a whole process for reaching a collective bargaining agreement. Just having a court have jurisdiction to enforce a contract would be insufficient and one deficiency in that approach, which we point out in our testimony, and Captain Babbitt has explained a little more in his responses to earlier questions, is that amendment would still leave the parties to a dispute over international flying able to sue self help.

Conceivably, it would allow them to still use self-help regardless of a contract, thus if pilots felt that they didn't like what a company was doing, if the provisions of the Railway Labor Act didn't apply to the international operations, the pilots may engage in a slowdown and work stoppage, and likewise the company, if it didn't like the contract, could impose its own ideas of what the contract should be and just, say "go to court." But in the meantime, the status quo provisions wouldn't be in effect and the labor peace provisions wouldn't be in effect. The Railway Labor Act really can't be carved up. It is a complete package.

Mr. OBERSTAR. If we amended the Railway Labor Act only to the question of court jurisdiction, would airline companies then be able to say we don't have to bargain with you, we are not required to bargain with you?

Mr. BAILEY. That would still be the fundamental problem. The problems that were brought up by the ninth circuit decision—and there is an earlier case from the 1950s involving Northwest flight attendants—the fundamental problem or the issue there was whether the company had to bargain at all and the proposed amendment wouldn't address that issue at all.

Mr. OBERSTAR. Charter carriers looking at their testimony prior to the hearing today will claim that this bill would prevent them from competing for contracts to offer wet lease service and the way they raise the problem is that some foreign airlines insist that the carrier offering the aircraft must use cabin attendants of a foreign airline. So what they are saying is that the bill would prevent the use of foreign cabin crews.

Mr. BABBITT. Again, that would, I think that falls under not only the status quo, but what have they already negotiated? There is a range of possibilities. People, I think, have taken their eyes off of our view of the applicability of the Railway Labor Act and focused it more over onto particular pieces within their agreement.

Someone asked me at the break an interesting question. There was concern this might have a very negative effect on carriers that were unorganized: how would this apply? Very simply it wouldn't apply because they are not organized under the Railway Labor Act. They don't have a bargaining agreement so there is no applicability or coverage of the Act for people who obviously——

Mr. OBERSTAR. If the Act were so changed as proposed in the Rahall bill, would it be possible for flight attendants to negotiate labor contracts that would permit the use of foreign cabin crews?

Mr. BABBITT. Yes, sir, they do that today. We have agreements in place. We have crews—there are currently crews from United Airlines, both pilots and flight attendants based in foreign countries today. They have negotiated that and the companies have never questioned it. The scope and the effect of Congressman Rahall's bill simply says that the applicability is unquestioned. The applicability of the Railway Labor Act to those people who bargained under it is unchallenged. It doesn't make any difference whether you operate under that agreement. Our Railway Labor Act would apply.

Mr. OBERSTAR. Now, let me take that one step further. Is it possible that a U.S. airline and ALPA could reach a collective bargaining agreement which allows the foreign—which allows the carrier to fly international routes with foreign pilots?

Mr. BABBITT. Yes, sir.

Mr. OBERSTAR. Could those pilots also be represented by a union in another country?

Mr. BABBITT. If the carrier had made an agreement, an arrangement, negotiated with ALPA to say that flying between any two type of—we will distinguish it this way. The airline pilots recognized by this agreement will do all the jet flying. Helicopter flying can be done by the foreign nationals of your choice. That is a perfectly legitimate agreement that we would enter into.

Mr. OBERSTAR. Federal Express will testify that, and they are scheduled to be next, that some bilaterals provide that when one country's airlines maintain a staff in the other country, there should be compliance with that country's labor laws. Do you know any such circumstances?

Mr. BABBITT. We recognize that. Again, there has been a long historical precedent going back to Braniff Airlines who had foreign nationals that were required as part of the bilateral agreement and we typically make provisions and carve out exceptions as necessary in order to allow that to operate. Russ.

Mr. BAILEY. I would like to elaborate on that, if I may, Mr. Chairman.

In fact, this might be an opportunity to respond to one of Congressman Laughlin's questions. He asked for this in writing, but I think we can make a preliminary response right now and the question is how can this legislation be enforceable without reopening bilateral aviation treaties made with other countries, and the short

answer to that, which has already been given by Captain Babbitt, is that this legislation would not require the reopening of any bilateral treaties. The provision that is referred to in the Federal Express statement that I believe might be given later today and which appears in several of the United States bilaterals simply says that one party to a bilateral must respect the laws of the other party to the bilateral when it brings in employees to perform work within the territory of the other party.

What that provision is referring to are ground-based employees who come in and require visas and will be working at a base there. That provision has never been applied to the negotiation of wages and working conditions of flight deck crews who operate in international operations.

Mr. OBERSTAR. In the Pan Am case, a Federal Court refused to enforce an agreement between a U.S. carrier and its employees over foreign operations. If those agreements are not enforced by Federal Courts, then are they enforceable anywhere else? In any other court in any other country?

Mr. BABBITT. Preliminary answer would be the court made that decision on the novel acceptance of the theory that the law wasn't applicable and that is the whole point of 4957, but Russ probably wants to expand on that.

Mr. BAILEY. I think Captain Babbitt hit the nail on the head. Again, it comes back to the point that there was a huge ambiguity there. If one aspect of the Railway Labor Act is called into question, what about all the rest of the framework. Was the contract properly negotiated? Where do you enforce it? How does a State court enforce part of a collective bargaining agreement when airline labor disputes are supposed to be resolved by a system board of adjustment?

There is a whole process that has been set up that has been called into question by these court cases and the amendment is designed to respond in a way that would clarify that.

Mr. BABBITT. Let me add if the amendment had been in place then it would have been completely cleared up and the U.S. court would have had clear jurisdiction to decide and, again, would have been the sole decider of enforceability.

Mr. OBERSTAR. But there is no other forum in which this issue can be resolved than a Federal Court or in the Congress by amending the law.

Mr. BABBITT. Well, within the agreements, and it is a requirement under the Railway Labor Act, the agreement itself should have a process of resolution. There are some exceptions when you can leave that process of resolution as they did in this case. They went and said we question the applicability. Had the Railway Labor Act been modified or interpreted by that court in accordance with the amendment that is being proposed, it wouldn't have been a question. It would have been resolved internally through a grievance process. It would never have cluttered a docket in the court system. It would have been handled as all other disputes under the agreement are handled with a collective bargaining arbitration or appeal in that fashion.

Mr. OBERSTAR. Well, Federal Express, which seems to be the most exercised against this proposal, says this is just a, quote, "a

transparent attempt by the Airline Pilots Association to obtain congressional assistance in its current negotiations with Federal Express by mandating terms ALPA has sought to negotiate."

Mr. BABBITT. Again, we are——

Mr. OBERSTAR. Are you trying to get us to negotiate your contract; is that what they are saying?

Mr. BABBITT. We did this with a great deal of anticipation since we have been trying to get this bill since January of 1991, more than two-and-a-half years before we represented the pilots. Ironically, during that period of time we had in place without question any number of other agreements that did have, in fact, scope, type of arrangements.

Again, I think we are confusing the issue of the applicability of the Act itself with the details of negotiations within a scope clause and very rightfully, the corporation of Federal Express may want to make an agreement with the pilots to say, look, we are going to base X number of pilots in this country and we are going to do all jet flying with pilots on the seniority list.

Now, we would like to open a domicile somewhere else and use small aircraft. For example, they currently use aircraft, single-engine aircraft from small cities to bring in to the outpoints overnight mail that eventually winds up in the hub. Those pilots are not covered by the collective bargaining agreement. We don't anticipate covering them.

We are not trying to negotiate covering those. We will exclude them and it is perfectly within that corporation's right to ask for other exclusions. They might well say we would like to hire 300 pilots in the Philippines to do some flying. Would you agree to that? We may or may not. It would be a subject of collective bargaining and this bill or this amendment in no way changes the collective bargaining playing field whatsoever.

Mr. OBERSTAR. Well, I may have some other questions later. I will defer at this point to Mr. Boehlert.

Mr. BOEHLERT. Mr. Chairman, I understand that most of the questions have been asked except one. In your testimony you state that U.S. labor laws apply to U.S. ships even if they are based in foreign waters. Can you give us some verification of that? I mean there are no specifics.

Mr. BAILEY. Bear with me one second. I will give you the citation on it.

Mr. BOEHLERT. Okay. You can submit it for the record. We don't have to hold up——

Mr. BAILEY. The National Labor Relations Board versus Dredge Operators Inc.. It is a United States Court of Appeals for the Fifth Circuit decision of just a couple of months ago, April 21st, 1994. It appears at 19 Fed Reporter, page 206. That is just the last in a long line of cases that have applied or have extended the scope of the National Labor Relations Act to cover U.S.-registered vessels and the labor relations on board those vessels wherever the vessels are.

Mr. BOEHLERT. Thank you very much. Thank you.

Mr. OBERSTAR. Ms. Dunn.

Ms. DUNN. No questions, Mr. Chairman.

Mr. OBERSTAR. Thank you very much for your testimony and we greatly appreciate your participation today. You may want to wait around through the balance of the hearings and see if there are some other questions that come up that we may need your response to. All right, sir.

Mr. BABBITT. Thank you very much, Mr. Chairman, and all the members of committee. We very much appreciate your time and consideration. Thank you.

Mr. OBERSTAR. Thank you. Our next witness is the spokesman for the giant in the industry and an innovator in aviation, Federal Express, Mr. Doyle Cloud, Vice President for Regulatory Affairs, a frequent witness before this committee, acknowledged authority in international aviation trade issues and I truly mean that. A giant in the industry and in the field of innovative delivery of services. Welcome, Mr. Cloud. Good to have you here.

TESTIMONY OF DOYLE CLOUD, VICE PRESIDENT FOR REGULATORY AFFAIRS, FEDERAL EXPRESS

Mr. CLOUD. Thanks, Mr. Chairman. I wish Fred Smith had been here to hear all of that. I do thank you for giving me the opportunity——

Mr. OBERSTAR. We will send him a transcript of the hearing.

Mr. CLOUD. I do thank you for giving us the opportunity to present our views on this issue and appreciate you and the other members of the committee spending your time on this proposal. I will not read our entire statement which was submitted, but would ask that the entire statement be accepted in the record.

Mr. OBERSTAR. It will appear in full in the record and I have already read it so you may summarize as you wish.

Mr. CLOUD. And you have already mentioned a number of times certain items that we addressed in this statement, and I certainly would be pleased to answer any questions you have.

I do want to reiterate that it is the company's position that this proposed legislation is an attempt by the Airline Pilots Association to obtain congressional assistance in an ongoing labor management negotiation.

Obviously, that may not be the exclusive reason that this issue is being pushed very hard by ALPA at this time, but that certainly is an issue that we believe is not simply a position of Federal Express, but one clearly to those who are negotiating our agreement with ALPA, clearly an issue that this committee ought to consider.

The other issue that we believe is extremely important is the difficulty of enforcing legislation passed by the United States Congress that is applicable to individuals who are domiciled in other countries.

The activities of Federal Express on a worldwide basis are very extensive. We have had as many as 6,000 employees in the U.K., for instance, certainly not 6,000 people who operate as either pilots or flight attendants, but we have very large numbers of individuals employed throughout the world and, hopefully, we will be increasing those numbers dramatically as Federal Express seeks to become the largest and most successful express company operating on a worldwide basis.

There is without question a significant concern about the impact of this legislation on existing bilateral agreements. While the gentleman from ALPA testified that those bilaterals negotiated by State and DOT, in his view, did not apply to pilots or flight attendants based in another country, the agreements themselves certainly speak only in terms of the enforcement of employment laws in general terms and do not exclude in any way their application to either pilots or flight attendants.

The difficulty which Federal Express is attempting to avoid is a question of who in fact is in charge in a situation where full-time employees of Federal Express are located in a foreign country, where there may be a base of operations that includes workers of precisely the same job description as exists in Memphis, Tennessee, a hub, for instance, that we propose to implement in the Philippines.

We will not only have pilots based in the Philippines, but we will have employees of every other type needed to operate the entire hub operations of Federal Express as we attempt to grow and expand our services within the Far Eastern region. And we believe being put in a situation where the government of the Philippines, for instance, demands that we enforce their labor laws with a law here that says the United States Government demands that we enforce the U.S. labor laws in the Philippines is a very difficult, if not impossible, situation for us to deal with.

Being in business today on a worldwide basis is extremely difficult at best and adding this sort of conflict in the labor area, we believe, is unnecessary and unwise. We do have union representation of Federal Express employees in our countries. We have consistently believed that the application of labor laws in those other countries is the appropriate approach. And we believe that the confusion which would arise in having two different jurisdictions attempt to enforce their labor laws on our employees in a foreign location is a rather unique and would be a very difficult situation with which we would have to deal.

So, again, we appreciate being here. I am prepared to answer any questions you may have. And on some issues I may not have answers, but I will be glad to obtain the necessary information for any questions you may have. Thanks very much.

Mr. OBERSTAR. You have always been very forthcoming in your testimony before this committee and we know that you will be in this case as well. You raise an interesting point, commonly known as conflict of laws, where laws of one government require something of a U.S. operator whose U.S. laws require it to do something else.

Is that a matter that could be governed by the bilateral?

Mr. CLOUD. It is, we believe, a matter that is now governed by the bilateral and the current bilateral says that the employment laws of the other country apply. I do believe that it can be and obviously has been dealt with in the bilaterals and certainly that may be the most appropriate way to deal with this issue. Because at least we have an understanding with both governments that a certain type of law applies or is applicable to a particular type of employee.

Again, without both countries here understanding what labor laws will apply, there is certainly a significant conflict of laws which we believe will be extremely difficult to deal with.

Mr. OBERSTAR. In your testimony, you say that the parties, quote, "may, but are not required, to negotiate over foreign employees."

What is the different between that and the situation where bargaining is mandatory?

Mr. CLOUD. What is the difference in the situation where bargaining is mandatory?

Mr. OBERSTAR. Yes.

Mr. CLOUD. Again, we are currently in negotiations with ALPA. We believe that it is possible for carriers and other carriers who obviously believe the same to have negotiated for expansive application of the Railway Labor Act. Again, our situation says a cargo carrier is totally different, in our view, than the activities of the passenger carriers.

We do believe that the future Federal Express will be establishing hubs throughout the world as we have done throughout the United States. As you will recall when Fred initially started this company, there was one hub in Memphis, Tennessee. There are now five hubs in the United States of America and we hope to expand this same concept on a worldwide basis.

To require that a labor agreement that has—to mandate the applicability of an agreement that is negotiated basically involving domestic operations in a foreign location or to require that prior to our making the business decision to locate a facility, another hub in a foreign country, we believe goes way too far in making our lives rather difficult.

We ought to be able to make those decisions again if ALPA and Federal Express have an agreement and believe that bargaining over that issue is appropriate, those issues are appropriate. We certainly are prepared, as we are doing today, to collectively bargain with ALPA on those issues, but to mandate that the application of the Railway Labor Act that will be negotiated in the future between Federal Express and ALPA apply to a hub that may be in Macau, we believe, is too far-reaching. It is not something that makes any sense from a business perspective and we believe from an employee perspective, as well.

Mr. OBERSTAR. That last series of statements really goes to the heart of this issue. Federal Express, as you said, has established hubs, now five in the U.S. and then plans to do so overseas. That is the issue here. You establish a hub overseas. Now, let me just get some factual information.

Who would be assigned to those hubs, U.S. pilots? Foreign pilots hired by Federal Express? If U.S. pilots, how long a period of time would you expect them to be domiciled at a foreign hub?

Mr. CLOUD. Well, a foreign hub would be similar to a U.S. hub, I would assume. Again, you are getting in a bit of operations here and I may be speculating a bit. But a foreign hub would be a hub built to last for some significant period of time.

All of the employees at that hub, as exists in the United States today, would anticipate lifetime employment in my view. Now, that doesn't mean we wouldn't close hubs and change hubs and do

things when business needs necessitate. But it would be a situation where a hub in the Far East, for instance, would be anticipated to conduct the business of Federal Express in that area for an extended period of time.

Mr. OBERSTAR. All right. You have people processing packages as you have in Memphis.

Mr. CLOUD. That is correct.

Mr. OBERSTAR. Those are not covered by this legislation.

Mr. CLOUD. That is correct.

Mr. OBERSTAR. You have ground handlers. They are moving the packages on carts and in the, what do you call those? I forgot that. Cargo containers on to aircraft. They are not covered.

Mr. CLOUD. Right.

Mr. OBERSTAR. You don't have flight attendants so pilots are the only thing we are really talking about in this issue.

Mr. CLOUD. Correct.

Mr. OBERSTAR. Let's posit Philippines and you, Federal Express, open a hub at Manila and presumably you would have some U.S. pilots, might have some Philippine pilots.

Mr. CLOUD. You could have a mix. I simply can't speculate as to who—as to what pilots may be on board. I suppose you could actually have Philippine pilots, pilots from Australia, et cetera, located out of a Philippine hub.

Mr. OBERSTAR. As Japan Airlines does. JAL has pilots of many nationalities, not only Japanese pilots.

Mr. CLOUD. Correct.

Mr. OBERSTAR. And let's assume that FedEx reaches a collective bargaining agreement with the Airline Pilots Association. That agreement could cover or not cover Philippine nationals.

Mr. CLOUD. Well, I suspect—I don't know that you can eliminate the coverage of railway—I don't know how you would isolate a particular pilot based on where he originates. I think the labor coverage certainly is a question that would involve all of the pilots, it seems to me, at a foreign location. I can't imagine that the Railway Labor Act would apply to someone because he may be a U.S. citizen, but not to another pilot based at that same location hired to operate the same aircraft, flying in the same aircraft.

Mr. OBERSTAR. Okay. So let's say that agreement then just does cover U.S. and foreign nationals who fly for Federal Express covered by that bargaining agreement. And your position, Federal Express' position is that regardless of whether they are U.S. or foreign nationals, U.S. or Philippine nationals, their activities with Federal Express should be governed by Philippine law not by U.S. law.

Mr. CLOUD. No, I am saying that the United States Government should not try to mandate that U.S. law apply in the Philippines. Not necessarily that—I am not taking the reverse side of that either saying that the Philippine law obviously applies to every individual that may operate to or from the Philippines, but again I think the confusion that comes from a mandate from the United States that says that all of these employees based in the Philippines will be required to comply with U.S. labor law is not a good law. We do not do that.

Again, we have employees in every country. I can't imagine how difficult it would be to do business if we simply changed the titles on these individuals that you are considering here and said all couriers in the U.K. have to—who are employed by a U.S. company would have to be subject to the National Labor Relations Act. It makes, in my view, and in our view, little sense for us to be trying to legislate the application of Federal Express' employees in foreign jurisdictions, and it doesn't matter to us whether that employee is a pilot or a handler or a courier. The conflict of law situation that we believe will ultimately result from this is going to be very detrimental to us and very difficult to resolve.

Mr. OBERSTAR. Thank you. I will have further questions. I will come back later.

Mr. Boehlert.

Mr. BOEHLERT. I mentioned in my question to ALPA that in their testimony they said that U.S. labor law applies to U.S. flag vessels sailing in foreign waters. Do you concede that point?

Mr. CLOUD. I am not an individual who is an expert in water transportation. I do know that Federal Express owned a barge company in France at one time that had Federal Express along the side. I don't know how we gave overnight delivery with a barge, but we did that and the laws of France applied to the activities of that particular barge.

Mr. BOEHLERT. Well, if they apply to flag vessels sailing in foreign waters, why shouldn't the same rules apply to airlines flying in foreign countries? That is the point I am getting at.

Mr. CLOUD. Again, we are not arguing and I don't know the details of the application of the U.S. labor laws in the maritime area. If those ships move to and from the United States, as I suspect they do in general terms, I can see a reason for applying the laws of some specific country; namely, the United States in those areas.

However, if that is a barge company owned by Federal Express operating to and from the Philippines, never touching the United States, but having operations that originate and terminate in the Philippines, requiring that those employees, whether they are maritime employees or aviation employees, be subject to U.S. labor laws is a difficult concept for me.

Mr. BOEHLERT. All right. The other thing is that if the employees engaged in the foreign operations are not covered by the collective bargains, then the unions have to work for all the employees. Doesn't that undermine the Railway Labor Act?

Mr. CLOUD. I am sorry?

Mr. BOEHLERT. If the employees engaged in the foreign operation are not covered by the collective bargaining agreement, doesn't that undermine the Railway Labor Act's preference for a system-wide representation in the agreements?

Mr. CLOUD. Well, you need to understand the Railway Labor Act doesn't just cover pilots and flight attendants. The Railway Labor Act covers every individual that works for Federal Express today as an express company and an airline.

Nobody is attempting to do what you seem to be concerned about, which is to say that the Railway Labor Act in total applies no matter where we have employees. I don't see that it in any way under-

mines the applicability, the broad applicability of the Railway Labor Act.

Again, if we were here talking about whether the Railway Labor Act itself was to be exported to every jurisdiction, I suspect that it would be far easier to argue this point. What has happened is we have sort of taken a very small cut out of those employees and said, you know, just for grins, why don't we try it with these guys. I don't think anybody on this panel would be willing to say that the Railway Labor Act applies to all of Federal Express' employees on a worldwide basis.

Mr. BOEHLERT. I understand, but they have to represent all the pilots not just the pilots——

Mr. CLOUD. They have to represent all the carriers. They have to represent all of the people who are dispatchers. They have to represent all of the people who handle packages. The Railway Labor Act applies to every employee, every employee at Federal Express Corporation, so your argument, if it makes any sense, it makes sense for those other employees as well and I simply can't see how a change in this one job category somehow jeopardizes the broad coverage of the Railway Labor Act at all.

Mr. BOEHLERT. That is all I have for now, Mr. Chairman.

Mr. OBERSTAR. Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman.

Mr. Cloud, good to see you here again today and to hear your testimony.

Mr. CLOUD. Thanks.

Mr. RAHALL. I want to begin by saluting Federal Express. You and all of the management and Mr. Smith for what I think is a remarkable success story in the annals of American business. Federal Express was started, what, early 1970s?

Mr. CLOUD. 1973, that is correct.

Mr. RAHALL. And I have had the opportunity to visit your hub in Memphis to talk with your Chairman on a number of occasions and to learn of the progress that you have made and the truly rapid expansion of your routes and services, et cetera.

Title II of the Railway Labor Act, of course, has been around since 1936, if I am accurate, and at that time, of course, there was not any indication that today's economy, that the global ramifications and operations would be what they are. Just as I doubt in the early stages of Federal Express you ever dreamed that it would have become such a big expansion of services as it is today through worldwide operations.

Any time that anybody wants to amend any act, whether it is the Railway Labor Act or any other legislation, of course, there is that someone who is going to insist that you are changing the rules in the middle of the game. Of course, it depends on who is being affected by those changes, but 58 years since Title II of the Railway Labor Act has been enacted.

Mr. CLOUD. Longer than that. I think that may have been when airlines were covered by the Railway Labor Act. I believe the Railway Labor Act, as passed, initially covering railroads, sleeping car companies and express companies was much earlier than 1936, but as I recall, 1936 is the date that it covered airlines.

Mr. RAHALL. 1926 then, perhaps. Don't you feel that there is some modifications that need to be made over that period of time, and if we are trying to update the RLA to today's global operations in the changed atmosphere in which we find ourselves, is not some modification perhaps within the rules of the game and perhaps necessary after such a long period of time?

Mr. CLOUD. First, let me say that I appreciate the comments that you made, the positive comments about Federal Express. I think what we do at Federal Express is easy compared to what you guys have to put up with in Washington, D.C., trying to deal with all these issues. And we appreciate just as much your efforts and your willingness to deal with a lot of very complicated issues.

To answer the specific question, I think I certainly would not sit here and tell you that there does not need to be a single change in the Railway Labor Act. I think, as you know, there is some significant concern about the Congress being involved as much as this Congress—as you have had to be in the past in Railway Labor Act issues. And I think there are certainly many people who believe there ought to be some change in your participation in railway labor disputes under the Railway Labor Act, but I am here facing only one proposal.

That proposal to extend the coverage to mandate the extension of coverage of the Railway Labor Act into foreign jurisdictions and on that specific issue, we don't believe that this change is appropriate. I do understand very well that that law was passed many, many years ago, and many times needs change and needs to be tweaked a bit to make that particular law as effective as possible.

As a matter of fact, Fred Smith will be giving a speech in Chicago next month concerning the bilateral situation which we are all involved with to a certain extent and aware of contending exactly that, that the bilateral was put in place many, many years ago when aircraft simply were incapable of performing the services that they now perform and many other carriers, both passenger and cargo, perform in the international arena today and we certainly will be arguing that change ought to come in that bilateral situation.

I do agree that there may be many changes that ought to be made with the Railway Labor Act, but this specific change and the confusion that we believe will occur in the conflict of laws situation, we think, is not a change that would make a more effective Railway Labor Act, but make one that was much more difficult for us to deal with, and I suspect for you to deal with, as well.

Mr. RAHALL. But you started as a U.S. company? Is that correct?

Mr. CLOUD. Very much so. Little Rock, Arkansas, is actually the place where Fred started this outfit and then moved to Memphis because Little Rock didn't think he was going to make it. And we have been there ever since. Yes, definitely a company.

Mr. RAHALL. I recall seeing that very vividly in the displays when I visited your headquarters. And you fly U.S. routes?

Mr. CLOUD. We fly many, many routes in the U.S. and we fly many routes outside of the U.S. Federal Express is today the largest all-cargo carrier in the world and I believe the second largest transporter of cargo in the world, of air cargo in the world and ex-

press. Again, when I say cargo, to me that covers both express activities and what is traditionally known as air cargo.

Mr. RAHALL. I guess my problem is I just, you are a U.S. company. You fly U.S. routes. My problem is why shouldn't the U.S. labor law then apply?

Mr. CLOUD. Well, if all of the other countries agreed with you that U.S. labor laws ought to apply in those other countries, we would not have a problem with that. The problem comes in our mandating coverage by an act of this Congress that applies to our operations that are in fact local operations in a foreign jurisdiction.

Again, it is a bit surprising to me that simply by isolating one type of employee we are ignoring all of these other employees that Federal Express and other Railway Labor Act carriers have in other countries. It simply does not—it does not, we believe, add anything to—it makes doing business very difficult to throw into the equation a conflict of laws between other jurisdictions.

We have unions in the U.K.; we applied to those employees the labor laws of that country. We may well have unions and I suspect we will in the Philippines, but the labor laws of that country, to our understanding, would and should apply to those employees and they are the same, again, the same employees, the same type of employees that are included in our work force in the United States and the Railway Labor Act, if expanded universally and totally overseas would apply to those workers, as well.

That does not, to us, create a landscape of business that will allow us to effectively increase our market share in foreign markets and increase our—and reach our goal of being the largest and most effective transportation company in the United States.

Mr. RAHALL. Do you intend to use your current pilots when you fly between foreign points?

Mr. CLOUD. I am not so—oh, the answer to that I am sure is, yes. Now, but we are not really talking necessarily about current pilots when you are talking about a location in Subic Bay. My guess is that our pilots, which is tradition, will be given the opportunity to go to Subic if that were, in fact, a pilot domicile.

There may be individuals hired, again as we talked about earlier, from that jurisdiction. There may be some requirement to hire people from that jurisdiction. We really, at this point, don't know precisely what will be required of us to initiate our services in the Philippines. We are working on that today.

We have people in the Philippines every day right now trying to work out all of the details of setting up a hub operation in a third country. It is a very difficult proposition. As a matter of fact, there have been times in the last month or two where we felt that we were going to be unsuccessful in negotiating all the issues that have arisen in the Philippines just simply trying to start up a hub location outside of the United States.

Mr. OBERSTAR. The gentleman's time is expiring.

Mr. RAHALL. May I have a second round also?

Mr. OBERSTAR. Yes.

Mr. RAHALL. All right.

Mr. OBERSTAR. I want to recognize the gentleman from Maryland, Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman. Mr. Cloud, if you don't mind, could you tell us the status of the negotiations with Federal Express with the Airline Pilots Association as far as Federal Express pilots are concerned?

Mr. CLOUD. I am not personally involved in those negotiations. Mr. Babbitt could probably give a better briefing on the status of those negotiations. I do know of a list of a very large number of issues that will ultimately be negotiated. There have been a significant number that have been addressed and a few on which the agreement has been completed, as I understand it. But since I am not involved in those negotiations and really, really can't appropriately comment, I think that might be a question you would like to ask Mr. Babbitt.

Mr. GILCHREST. I see.

Understanding that you are not a part of those negotiations, does knowing that those negotiations are going on have any impact with your understanding of Mr. Rahall's bill and what it might do to Federal Express?

Mr. CLOUD. Yes. One of the issues, again as said in the statement, one of the issues that ALPA has proposed to negotiate is, in fact, this issue of the application of the territorial application of the Railway Labor Act.

Mr. GILCHREST. Could you—you discussed a number of—well, you have talked a good deal about the problems that would result from the Rahall bill becoming law. But could you be specific as to what problems would be caused to Federal Express if this bill actually became law? I guess I am asking why don't you want your foreign operations to come under this new jurisdiction?

Mr. CLOUD. Again, our primary concern is that countries tend to be very possessive of their own areas of jurisdiction. I mean, the Philippines—just as, I suspect, if Nissan, with its plant in Tennessee decided to apply the labor laws of Japan, you guys would just go nuts and rightly so. I mean it is a situation where we believe that the United States certainly has a broader better view of labor relations than many, many countries to and from which Federal Express operates.

Other countries, however, have that same view of life. They want to control what goes on within their country and what we are talking about here is the application of U.S. law to an operation that is based and in effect confined within a particular country. There certainly will be pilots operating to or from the hub in the Philippines, but there will be a domicile of pilots who operate exclusively to or from the Philippines. So we believe that there is going to be a significant conflict between our government and that government about the application of labor laws that deal with individuals based in the Philippines or some other location. It could be Macau. It may be many other locations throughout the world and that we are going to be the ones caught in the middle and trying to expand a business and grow a business and hire people, create employees and create wealth and cash and all of that sort of stuff. What we are all about these days is attempting to do that in a way that is as effective as possible. And we believe the passage of this legislation, as it applies to a cargo carrier that may have hubs

throughout the world creates a very difficult situation for us in the future.

Mr. GILCHREST. So in general, your idea is that overall this would really reduce us being competitive with foreign carriers if this law went into effect.

Mr. CLOUD. And keep in mind that it may well be that if the two different jurisdictions applied their laws, that our agreement with the individuals with each of the individuals in those jurisdictions would be the same as those individuals in the United States. I mean there is nothing—we are not talking here about what the agreement will be with our pilots. We are talking about whether there would be a conflict here and that the application, the specifics of a negotiated arrangement based on what we do today would be mandated as we expand our operations to other areas.

I can tell you what the labor laws are in Macau today, for instance, which is the location that we are looking at assuming that the Philippines issue is not—the Philippine issues are not resolved. I don't know what their labor laws are.

What we don't want to see is a situation where there is a tremendous amount of conflict about that. We may well pay pilots based in Philippines or in Macau precisely the same thing, have exactly the same benefits as pilots in the United States. That is a matter of negotiation with the appropriate authority, but we do believe that the conflict of law situation is a potentially difficult problem in the future for Federal Express.

Mr. GILCHREST. Thank you.

Mr. OBERSTAR. You mentioned earlier that you think laws should be tweaked from time to time. I think we did a little bit of tweaking this year in the aviation reauthorization bill on the Motor Carrier Act, which we included in the AIP reauthorization. We did a lot of tweaking for Federal Express.

Mr. CLOUD. If you told Fred Smith that was tweaking, he would have a heart attack and die, Mr. Congressman. We do appreciate the tweaking that was done.

Mr. OBERSTAR. There are some folks that think that in exchange for that tweaking there ought to be a little tweak over here on this side. You sure wouldn't like to have the laws of France applying to your pilots, though, would you? Have you looked at French labor law and the problem that Air France has trying to get its house in order?

Mr. CLOUD. We actually have an operation—as you may know, we have a large operation today in France and we have pilots that are operating 727s out of Paris today. We don't have a conflict in that situation, to my knowledge.

Those pilots are operating under the same work rules today as every other pilot in Federal Express. But what we don't want to happen is a situation where the United States Government mandates that we do a certain thing and that the foreign government mandates that we do a certain thing particularly in light of the bilaterals which say that the employment laws of that other jurisdiction apply to——

Mr. OBERSTAR. But the French Government does not insist that FedEx pilots based in Paris be governed by French law, French labor law?

Mr. CLOUD. Today, the Federal Express pilots flying 727s out of Charles De Gaulle into other parts of Europe are being compensated under the same plan that all other pilots have in the United States. Now, again, we aren't operating yet a negotiated agreement, but the pilots certainly operating over there are part of the pilot group that is currently represented by ALPA in negotiations.

Mr. OBERSTAR. It just strikes me that U.S. carriers from a management standpoint would be a whole lot better off governed by U.S. law than by, say, French law and the pilots might, sure, want to be covered by French law, because my understanding, and I have done some study of this matter, is one of the big problems of Air France is downsizing that carrier.

French labor law confers such extensive benefits on employees that it stays a year before you can downsize an operation and you are paying significant amounts of money, and at any rate, I just want you to think about that. I want to recognize Mr. DeFazio.

Mr. DEFAZIO. I thank the Chairman. I regret that I had another obligation with a regional problem that delayed my arrival, but I do have a couple of questions.

I guess I came in during the gentleman's response to an earlier question and there was some mention of Macau and operations out of Macau, and you deal with the appropriate authorities.

Well, in the not too distant future the appropriate authorities of Macau are going to be the Peoples Republic of China, not so renowned for their treatment of labor in their country and, secondly, with a pretty crummy safety record. You know, I wouldn't get on one of their domestic flights because you have better odds there of dying I think even than you do in Russia these days.

I am a little puzzled most of the time when I hear from large corporations what we desire most, Congressman, is consistency. We want consistency. Now, consistency could be brought about by adopting the gentleman from West Virginia's legislation. I have heard no allegations that you have—I mean you are organized, I understand it, or at least there was a successful election, correct?

Mr. CLOUD. Correct.

Mr. DEFAZIO. So you are in negotiations now?

Mr. CLOUD. Correct.

Mr. DEFAZIO. And this wouldn't alter that situation. I understand most U.S. domestic carriers have arrangements for their foreign-based crews that are congruent with the agreements negotiated for their other pilots and sounds like you want to do the same thing, so I am not exactly sure where the harm would come except for this word that seems to become magic out there, which is we don't want a mandate.

Well, my concern is if you don't have a mandate, what we do is we seek the lowest common denominator, and I tell you what I am afraid of in this aviation industry. I certainly know that an operation like FedEx wouldn't do this, but some of your competitors might, which is they seek out a three-bit nation with a tin pot dictator that doesn't enforce any labor or safety standards or maybe some big dictatorship out there like PRC and they begin to base operations there and they are just exempt from all these laws that we have sort of taken for granted in this country.

It has happened with the Merchant Marine. What is to prevent it from happening in aviation, for convenience? I am very concerned. I think this would be a good point at which to establish the standard and set guidelines, everybody will play by the same guidelines and you are not going to be disadvantaged.

Do you really want to operate under the laws of the Peoples Republic of China out of Macau? Do you think it is a good business operation?

Mr. CLOUD. The basis for business operation, again, somehow you are presuming that the only thing Federal Express is going to do are those things mandated by the local jurisdiction. Federal Express is a company that is in no way likely to take advantage of people it employs in other jurisdictions simply because we are allowed to do so. We don't pay the minimum wage. We offer all of our employees a very extensive excellent package of health coverage not mandated by anyone.

We operate aircraft that are, in our view, far safer, more reliable, more consistent in their dispatch than any air carrier in the United States of America not because we are mandated to do so, but because it makes good business sense to do so. We are going to be a company in worldwide commerce that continues with that program. We have been very successful that our customers believe in us because of that. So to sort of presume somehow that——

Mr. DEFAZIO. If you would just suspend for a moment, I just want to make certain, and I appreciate your assertions and your guarantees in this matter, and I think that is great, so then I get back to the question of what is the problem here? Seems to me you are hung up over the word, "mandate."

The other problem you have, if you have watched some of my previous questioning of regional air transport authorities and others, is you get some two-bit operators out there who are dragging down everybody else's standard when you don't have a Federal standard which the good operators are already meeting and they want to have an exception and they say, well, we are going to have to start chipping away, what we are doing is protecting Federal Express if we adopt this law.

Mr. CLOUD. You don't, in our view, protect Federal Express when you create a potentially difficult conflict of law with the PRC. We will have to deal with our employees the best way we know how, but for us to be involved in a situation where you mandate the application of the Railway Labor Act, again, one of the things that you presumed is one of the things that is totally erroneous in our situation: Cargo carriers and passenger carriers are totally, totally different.

We operate at different times of the day. We have a different service that is performed for our customers. We have the ability as a cargo carrier to create, we believe, bases in international jurisdictions that will allow us to very effectively compete, if not to dominate, the express business in those areas.

It is not a problem for United or American because they don't have the same situation that Federal Express expects in the future; That is, very large operations similar to operations in our five hubs in the United States located throughout the world. And when this Congress begins to mandate the applicability of U.S. labor laws on

those operations, we believe we are going to find it very, very difficult to expand as a competitor in those marketplaces.

Mr. DEFAZIO. Just tell me what, use one example under the existing law applied under the Railway Labor Act that would be extended to you that you would object to?

Mr. CLOUD. We would object, again, we have isolated one group of employees. We have isolated 2,000 out of 100,000 employees as you sit here and talk. The pilots themselves.

The Railway Labor Act applies to every other job description at Federal Express, and why, if you are going to mandate the application of U.S. labor laws to a crew force domiciled in the Philippines, doesn't it make sense to mandate the application of the Railway Labor Act to all of the other employees that work in Subic Bay in the Philippines?

Mr. DEFAZIO. Is that the gentleman's bill, does—Mr. Rahall?

Mr. RAHALL. I am sorry.

Mr. DEFAZIO. The gentleman is alleging that this doesn't apply just to the air crews but will apply to all other employees, including ground personnel?

Mr. RAHALL. No.

Mr. CLOUD. It does apply to the air crews and does not apply to all the other personnel, all of which are covered by the Railway Labor Act.

Mr. DEFAZIO. So do you think, then, perhaps we should expand the scope?

Mr. CLOUD. I think it is nuts to do either one. To do what we are talking about doing here and trying to force our labor laws on the foreign jurisdiction is not something that is going to create an atmosphere that will allow us to grow as an American company, to continue to employ people in the United States supporting those operations, et cetera.

We are here simply because one of the things that we fight probably more than any company in the United States of America is the—the constant change and application of U.S. and foreign laws. We operate in 180 countries. And my group has the deal with those, with all of those laws and all of the conflicts, both political conflicts, as well as administrative, regulatory conflicts that exist today throughout the world. It is a very, very, very difficult scenario in which we operate.

Mr. DEFAZIO. But perhaps——

Mr. CLOUD. And we believe—we believe—again, we have a difference of opinion. You think you are going to solve our problem. It just so happens that the people who manage Federal Express disagree with you on that and believe that in so doing, we are going to create problems rather than eliminate those problems.

Mr. DEFAZIO. Well, yes. I think that if you went to the PRC's encouraging new business investments, said these are the rules of our country and this is what we are going to abide by, I think they might accept it. If you go in there without any standards of your own, you may find some pretty bizarre, you know, besides having to bribe people, which I know is illegal under U.S. law, and you wouldn't do it—but I mean, that is very common practice in the PRC, it is chaos over there. And you know, the—there is no respect

for the rights of working people, and I know that as a company you don't support that sort of policy.

Mr. CLOUD. Absolutely.

Mr. DEFAZIO. You already said you want to have equal or equivalent benefits. I just don't see the problem from the extension that you do. I think we are going to have to disagree over that.

Thank you, Mr. Chairman.

Mr. CLOUD. Thank you.

Mr. OBERSTAR. The gentleman's time has expired.

Mr. Rahall.

Mr. RAHALL. Thank you.

I want to follow up on a question you asked, Mr. Oberstar, earlier of Mr. Doyle, in regard to your opening paragraph when you state the proposed legislation would tip the balance of negotiations.

I guess I am wondering, isn't that a premature judgment? After all, we are all cognizant of the fact the Congress is winding down, the bill has just been introduced. We are just having the hearings. There have been no votes, there has been no indication where Congress stands on this issue.

We are getting ready to adjourn for this year. We are looking at early 1995 at best, if the bill is reintroduced. Isn't that a premature judgment of what we are doing here in trying to discuss this issue and in no way prejudice the negotiations that are ongoing with ALPA?

Mr. CLOUD. I would agree with that, Congressman Rahall. That was really a sort of a perspective statement assuming that legislation may be imminent. But I do agree that that comment may be a little early and if nothing happens on this legislation for another—another period of time here, it may well have no impact at all.

Mr. RAHALL. Let me ask you another question and I don't—I am not asking you to reveal, publicly, private negotiations. I recognize the problem with that, and it is not what I am trying to get at in this question. But in your negotiations with ALPA, and it is my understanding, as I said earlier, that this has been done in other similar type situations, can't you negotiate agreements to allow you to contract out or subcontract your flights on solely foreign markets under Philippine laws rather than U.S. laws?

In other words, if you hire Philippine nationals to fly your flights, if you register your aircraft under Philippine law, then my legislation is nonapplicable and that is my intent, anyway. And is that not a part of what would be agreeable under negotiations?

Mr. CLOUD. Can we—I assume, Congressman, realistically we can negotiate—we can negotiate anything with ALPA, whether there is a law to back it up or not. As you know, my wife is a pilot and they kind of keep me away from those negotiations. I might give away the whole store if I was negotiating for the company. But I do believe that——

Mr. RAHALL. It has been done with other airlines.

Mr. CLOUD. That other airlines have negotiated the extension of the Railway Labor Act in their agreements without a great deal of difficulty, with certain exceptions I think that have been mentioned here earlier.

Mr. OBERSTAR. Would the gentleman yield?

Mr. RAHALL. Sure.

Mr. OBERSTAR. Just to follow up on it, if ALPA's testimony was that if the Rahall bill is enacted, ALPA and Federal Express could negotiate an agreement that some foreign operations will not be covered by the collective bargaining agreement; is that correct?

Mr. CLOUD. Again, Congressman, I believe we could negotiate currently, whether this legislation passed or whether this legislation doesn't pass, I suppose the two parties could get together and agree to virtually anything. Now, you know, there might down the road somewhere be a conflict of laws that we would have to deal with in terms of enforcement or that the employee——

Mr. OBERSTAR. If that is the case, then what difference does it make whether the Railway Labor Act applies or not?

Mr. CLOUD. It is the man—again, it is the mandating thing that creates the problem for us. When the United States Government mandates what happens in the Philippines or mandates what agreement applies in Macau, we believe that is the problem. Then you have got a situation where there is a true and literally unresolvable conflict.

You have got the Philippine Government mandating that we—that we hire employees and deal with employees on their turf, in their fashion, which is the traditional way that these matters are taken care of, and yet we are faced with a law from the United States of America that says we are going to tell you how to deal with your employees in the Philippines. And that mandating aspect is what concerns us dramatically.

We already have—ALPA already has the ability to negotiate with Federal Express, again, virtually anything they would like. But that—the application, the application of the Federal, the U.S. Federal law that says we are required to apply that law in the Philippines, does not exist.

Mr. OBERSTAR. If Federal Express and ALPA negotiated, as you said, anything we like, and it included certain terms that are not in consonances with Philippine law, for example, how is that different than if the Railway Labor Act were—than if the agreement were negotiated under the terms of the Railway Labor Act? Would the Philippine Government say, well, you can't enforce those terms?

Mr. CLOUD. No. Again—again, we are—the problem is that we are trying to apply a law here to situations that in the future we simply cannot predict.

Would the Philippine Government allow you, Congressman Oberstar, and this committee to mandate the application of certain labor laws to all employees that are American in the Philippines? No.

I mean, we would have a fight on our hands no matter what. If we had an agreement with—with ALPA today that applied to the existing operations of Federal Express, and you mandated that that agreement apply to every other jurisdiction to which we will move in the future, we will have a difficult situation to deal with.

We don't know what the laws are. I personally don't know what the laws are in Macau. We do somewhat at Federal—someone Federal Express knows what the laws are in the Philippines. As we have looked, we have looked at Shannon, Ireland, we have looked

at Taipei in Taiwan. We have looked at Stanstead in the U.K. We have had a location in Brussels. We now have a change of gauge operation which is somewhat of a hub operation at Charles De Gaulle in France. And as we move beyond this to truly become a competitive entity worldwide, we believe that this—the mandating that the agreement that we signed with ALPA apply wherever we go is a difficult proposition for us to deal with.

Mr. OBERSTAR. Mr.—thank you for yielding.

Mr. RAHALL. Thank you, Mr. Chairman.

I don't guess I have any more real questions, except just to, I guess, say the bottom line here is it seems—everything, of course, is negotiable. And it is not this author's intent to tip the balance of negotiations or to involve ourselves where with our jurisdiction should not be involved.

But the fact of the matter is, you know, as we have—as is well-established, you are a U.S. company flying U.S. Routes. You have—ALPA has organized your airline pilots and U.S. labor law ought to be consistent.

We are trying to provide for uninterrupted public service here in addressing public interest through this legislation. And I guess my bottom line is that I would hope these could be negotiated, the other issues that have been raised during the course of this morning's hearing and that those negotiations take place. That is my bottom line, I guess.

Mr. OBERSTAR. Thank you very much.

Mr. CLOUD. Thank you very much.

Mr. OBERSTAR. Mr. Cloud, you have been very helpful and we will have to give further consideration to these cautions raised today, and I am sure we will revisit this issue in the next Congress.

Mr. CLOUD. Thanks. Appreciate it very much.

Mr. OBERSTAR. Our next witness panel, actually, Mr. Edward Driscoll, President and CEO of the National Air Carrier Association, a frequent visitor before this committee, a witness before the committee. Ms. Pam Young on behalf of Tower Air; and Vance Fort for World Airways.

We are glad to have you here.

TESTIMONY OF EDWARD J. DRISCOLL, PRESIDENT AND CEO, NATIONAL AIR CARRIER ASSOCIATION, ACCOMPANIED BY PAM YOUNG, TOWER AIR, ON BEHALF OF STEPHEN L. GELBAND; AND VANCE FORT, WORLD AIRWAYS

Mr. DRISCOLL. We are happy to be here, Mr. Chairman.

You have introduced the parties with me. I have a prepared statement. Pam Young will summarize, when I finish, Mr. Gelband's statement. And Mr. Vance Fort would like to introduce for the record his president's letter to you on this same subject, if that is permissible?

Mr. OBERSTAR. Yes.

Mr. DRISCOLL. With your concurrence, Mr. Chairman, I would ask that my statement be made part of the record.

Mr. OBERSTAR. Without objection, so ordered.

Mr. DRISCOLL. And I will summarize briefly the points we make.

Mr. OBERSTAR. Please proceed.

Mr. DRISCOLL. We are very pleased to be here and have this opportunity to address the provisions of H.R. 4957. As you know, we do oppose enactment of H.R. 4957 for the following reasons: While our existing contracts, those carriers that have contracts with their flight attendant unions, under the scope clause, exempt the operations for wet leases and other operations outside of the country, we fear that the mere enactment of this legislation will give the unions additional thrust, that they will not agree again to exempt these operations from the scope clause of the agreements.

The fact is that these represent very substantial operations for our group of carriers, totaling more than $125 million a year, and they involve the movement of personnel outside of the United States and between two foreign points. Specifically the very large one is the Hajj operation, which involves the movement of approximately 2 million pilgrims from various points in Europe to Mecca and Saudi Arabia for the religious—the religious ceremony, the carriers that represent the Muslims in their country have the prime right to move those people.

However, they don't have the capability, so they wet lease aircraft from my carriers and others and we compete against foreign carriers for that business. And in asking us to perform, they mandate that we utilize their flight attendants aboard those flights.

Those flight attendants are fully trained in accordance with the FAR's and meet all of the Federal aviation regulations, and they are trained in accordance with the culture of the country, the religious aspects. The transportation of these 2 million pilgrims is indeed a religious operation.

There are other operations that we are involved in, and our carriers engage in wet leases involving cargo operations, as well as passenger operations, and these are commonly for foreign carriers who also for reasons of wanting their own flight attendants aboard, require the carrier to utilize them for the relationships they have with their customers and the fact that they want to make sure that the customers recognize this as just an extension of their national airline.

For all of these reasons, we would hope that the committee would not favorably report this legislation and that we would be permitted to continue as we are, and as I said before, we have contracts, the scope clause excludes these operations.

Mr. DRISCOLL. We fear that if the legislation is enacted it will give an upper hand to those negotiating on behalf of labor and they may not agree with the same exclusions they now agree with. I think most unions have recognized that the application of the Railway Labor Act to foreign operations has been a matter in controversy and coupled with the court's decision on that. Therefore they have been willing to negotiate and exclude these under the scope clause.

I think, Mr. Chairman, we could raise the issue that since we have excluded these under our scope clause, we have contracts with the unions, why is it so essential that the unions now extend the Railway Labor Act to the foreign operations? It is the back side of the question that we heard this morning; why shouldn't you have this extension and what harm does it do for you? Since we already

negotiated labor contracts and have exclusions for them, why do we amend the Railway Labor Act at all?

I would like now to turn it over to Pam Young to summarize Steve Gelband's testimony.

Ms. YOUNG. Good afternoon, Mr. Chairman.

Tower Air operates scheduled and charter services, both domestic and international. We are concerned about the economic impact of H.R. 4957 on international operations. If this bill is passed, Tower Air will no longer be able to compete for any charter and wet-lease programs operated in the past. And that would mean reduced Tower Air operations and numerous lost jobs.

Competition for wet-lease operations is very strong among U.S. and foreign carriers, for example, the Hajj. Last year, Tower Air operated five aircraft for Garuda and that totaled $25 million in revenue for Tower Air. The conditions require that Tower Air use our aircraft and our cockpit members and Garuda flight attendants. We must use their flight attendants for language and religious and secular customs.

If H.R. 4957 is adopted, all flight attendants on wet-lease charter services must be union-eligible employees of the operator carrier. Tower Air and other U.S. carriers would be unable to meet the requirements of the foreign wet-lease program and all the business at that time would go to foreign carriers.

In the past, these operations have supported paychecks of all Tower Air employees and that ranges from pilots to maintenance and to stock checks. If we must use Tower Air flight attendants or pay them for not flying if we operate a wet lease, our cost of operations and our price to bid for the business would be much higher than foreign carriers who are competing for the same business. Almost certainly, we understand, that U.S. carriers will be priced out of competition for a large segment of their current business.

Tower Air strongly urges this committee not to recommend that this bill become law. And we thank you for hearing us today.

Mr. OBERSTAR. Thank you.

Mr. Fort, you have extemporaneous remarks to make.

Mr. FORT. Thank you, Mr. Chairman.

Extemporaneously, we didn't provide the committee with the advanced testimony under the rules and recognize that we are limited here.

Mr. OBERSTAR. You have never needed prepared statements. You have always come well-prepared and well-informed on the subject matter at hand.

Mr. FORT. I would like to say just a very few words and then—and stand ready to answer questions, because I have been involved directly in our labor negotiations as well as with the regulatory matters that have been alluded to by a former witness.

In our opinion, the opinion of World Airways, this is really a question of legislation which would unreasonably interfere in the collective bargaining process. And it favors labor in the process of doing so.

We think that will actually foster disputes which is contrary to the act, which is to harmonize commerce and prevent disputes in air transportation. And finally and most importantly, we think it

would unduly harm the competitiveness of U.S. carriers vying in an increasingly competitive world for international business.

We, World Airways, operates a large number of wet-lease flights on behalf of foreign carriers, on behalf of U.S. and foreign carriers. A good number of the operations are in foreign commerce, from a foreign point to a foreign point. And a very large percentage of the revenues that we derive are in concert with operations where we are providing wet-lease services and we are using foreign flight attendants in the performance of those operations.

We use those foreign flight attendants because that is what the customer demands. If we were—we are concerned about the possible scope of this legislation extending to those operations and undercutting our ability to perform them, that would be devastating to our company. As I said, a good 40 percent of our operations today are conducted on behalf of customers who really require foreign crews and cabin crews as a condition for winning those contracts.

So with that, Mr. Chairman, I appreciate the opportunity to speak extemporaneously and will be happy to answer any questions.

Mr. OBERSTAR. Thank you very much.

Let me invite Mr. Rahall to offer whatever questions he may have at this time.

Mr. RAHALL. Thank you, Mr. Chairman.

Mr. Driscoll, how many members are there in the National Air Carriers Association?

Mr. DRISCOLL. There are six air carrier members. I will provide you with a list if you would like them. And they represent about $2.5 billion a year in revenue. They have in excess of 5,000 employees. And they operate from the most modern and the large aircraft 747, MD–11s, DC–8s, and the small aircrafts. Some of them operate 727s.

All in all, the National Air Carrier's six carrier members are the largest supporters and immediate response for national defense. We are proud that all of our members are in the CRAF Program. We were the first into Desert Shield/Desert Storm operations, the first into Mogadishu and the first into Haiti, taking in the 10th Cavalry, so we do support a large part of the Department of Defense. We do operate scheduled service, charter service, but we also engage in a large amount of wet-leased operations for foreign airlines.

Mr. RAHALL. I have read and heard what you said about your members ability to obtain contracts to obtain the wet-lease operations, et cetera, especially as it relates to the pilgrimage and the Hajj. Couldn't your member carriers have purely foreign routes, and where special circumstances exist, as they have, and you very well documented, couldn't they just subcontract foreign nationals not represented by U.S. unions?

I understand that it is being done by American and United today. They have reached agreements with their flight attendant unions that permit flight attendants to work on certain purely foreign routes. But my question is can't this subcontracting be negotiated as it is currently done?

Mr. DRISCOLL. They don't need a subcontract, Mr. Rahall. They have under the scope clause excluded with their flight attendant unions the operations under wet lease and for other foreign operations. And, therefore, they are able to operate them today in accordance with their labor agreements.

Mr. RAHALL. I understand that, and nothing in my bill changes the fact that they are exempt nor does it change the fact that these have been negotiated settlements that have been entered into.

Mr. DRISCOLL. The only point we would make, Mr. Rahall, is that their ability to negotiate these arrangements within the scope clause of their existing agreements, is because there has been a controversy as to whether the Railway Labor Act applied to these operations. And in view of that, they have been able to negotiate—we fear that if the Railway Labor Act is made applicable to them, our ability to negotiate these and exclude them in scope clauses will be impaired, we may not be able to do it and, therefore, we may lose a substantial business.

Mr. RAHALL. Thank you.

Mr. OBERSTAR. If the gentleman would yield?

Then what you are saying, Ed, is that if this legislation is passed, it would simply make unions less agreeable in the future?

Mr. DRISCOLL. Could be. It could be very difficult to negotiate those arrangements. One of the arrangements that Tower has negotiated, resulted from a case that was in the courts, and in order to compromise the case, that was agreed. So it is not an easy matter to negotiate these things, sir, as you well know. And we fear that the fact of extending the Railway Labor Act to these gives labor an upper hand and it is like putting a gun to our head, we feel.

Mr. OBERSTAR. I yield back to the gentleman.

Mr. RAHALL. I am through.

Mr. OBERSTAR. No further questions?

Mr. RAHALL. No, Mr. Chairman.

Mr. OBERSTAR. Thank you.

Well, there is no impediment in the Rahall bill to negotiation between any one of your member carriers and its union, if they have a union?

Mr. DRISCOLL. That is correct.

Mr. OBERSTAR [continuing]. In which wet lease would be excluded from coverage; right? There is no impediment in here?

Mr. DRISCOLL. There is no impediment in the bill as it stands.

Mr. OBERSTAR. What you are saying, if the application of law of the Railway Labor Act is extended to foreign operations, it would empower unions, embolden unions to negotiate tougher and insist that wet leases be covered?

Mr. DRISCOLL. That could happen, sir.

Mr. OBERSTAR. Have you had any indication that that might happen?

Mr. DRISCOLL. We haven't. Since the Railway Labor Act hasn't applied, sir, we haven't had that problem, except that I think these people can tell you when negotiating their scope clauses and the exclusions that they have gotten in the scope clauses, this has not been easy.

You want to address that Pam or Vance?

Mr. FORT. We are presently negotiating with our flight attendants, represented by the International Brotherhood of Teamsters, and the flight attendants have opened the scope clause for negotiation, and specifically in several provisions would prohibit the company from employing foreign flight attendants, nonunion flight attendants, I should say, not foreign, but nonunion flight attendants on any of our operations, something which is possible under today's contract.

Now, I am not in a position to say that they are emboldened by this bill and that is the reason they have opened this. They have opened this for independent reasons. They have opened it because they don't like what the company has done in this regard.

And quite honestly, we were in negotiations just last week. I personally am chairing those negotiations and they were not aware of this legislation, so they certainly haven't been emboldened yet, but they will be, there is no question in my mind but that they will be. And at the core here is the fact that the issues, the operations which they are challenging again represent a tremendous amount of the business that we do.

We can't really bid on a lot of that business if we had to use our flight attendants. If World Airways, if the situation were reversed for whatever reason, found that we had a requirement to wet lease from a foreign carrier an aircraft with a cockpit crew to perform a service, a schedule or program charter service, we would insist of course on the use of our flight attendants for that service.

For service reasons or for whatever reasons, we would certainly insist on that and that is the situation we find ourselves in. So our flight attendants of course would—are looking for more job security and all of the other, better wages, better working conditions, et cetera. They want to limit us in this regard.

I have no doubt again that as these negotiations progress with this bill in mind and with this movement, that they will be emboldened. We have no choice but to resist that and we will resist that again, but that will make the negotiations more difficult.

Mr. OBERSTAR. Very interesting.

Ms. Young, does Tower have foreign domiciles for flight crews?

Ms. YOUNG. We have one in Tel Aviv.

Mr. OBERSTAR. In Tel Aviv?

Ms. YOUNG. Yes.

Mr. OBERSTAR. How are they treated? What laws are they covered by?

Ms. YOUNG. That was negotiated in our contract that they would not be a part of the AFA. The Association of Flight Attendants. I can tell you that it was one of the two top issues that kept us in contract negotiations for three-and-a-half years. They are treated as a separate entity. They are a separate base, they have their own management, they follow Tower Air company regulations. They are, of course, subject to FARs, as we are, but they have their own disciplinary structure and limitations in the company.

Mr. OBERSTAR. So that is the Israeli nationals who are employees of Tower Air in Tel Aviv are governed by Israeli law on labor law?

Ms. YOUNG. Actually, they are, yes, they are. They have a separate contract.

Mr. OBERSTAR. But they have to—the cockpit crew must meet U.S. certification standards?

Ms. YOUNG. They are our pilots. They are U.S. pilots.

Mr. OBERSTAR. They are U.S. pilots?

Ms. YOUNG. Yes.

Mr. DRISCOLL. It is only flight attendants, sir.

Mr. OBERSTAR. Only the flight attendants are Israeli nationals?

Ms. YOUNG. Right through technicalities with the military that impeded us from having the Israeli pilots.

Mr. OBERSTAR. I see. But the U.S. pilots are governed by U.S. law?

Ms. YOUNG. Yes, sir.

Mr. OBERSTAR. And if the Rahall bill were enacted, what would change with respect to those pilots?

Ms. YOUNG. The pilots wouldn't be directly affected, they are flying one way or the other.

Mr. OBERSTAR. But it would affect flight attendants, you are saying?

Ms. YOUNG. Right. We try initially to secure the work efforts for our Tower flight attendants for the AFA people, but if——

Mr. OBERSTAR. It wouldn't ipso facto change their condition, it would—it would offer an opportunity, you are saying, for the flight attendant union to negotiate inclusion of foreign nationals under U.S. law?

Ms. YOUNG. They would try.

Mr. OBERSTAR. Or require that you replace them with U.S. nationals?

Ms. YOUNG. Perhaps.

Mr. OBERSTAR. As the pilots are U.S. nationals?

Ms. YOUNG. Perhaps.

Mr. OBERSTAR. I don't think I have any other questions. I think you have explained your situation very well. And your positions very well, and I clearly understand what the concerns are.

We want to thank you for your participation here today.

Mr. DRISCOLL. Thank you, Mr. Chairman.

Thank you, Mr. Rahall. We appreciate your time.

[Subsequent to the hearing, the following was received from Mr. Driscoll:]

QUESTIONS FROM CONGRESSMAN LAUGHLIN

4

(1)

HOW CAN THIS LEGISLATION CAN BE ENFORCEABLE WITHOUT REOPENING BILATERAL AVIATION TREATIES MADE WITH OTHER COUNTRIES?

If operations are conducted from the U.S. to foreign countries without basing crews outside of the U.S., it could be enforceable.

Where foreign hubs are created and foreign nationals are used, bilaterals would probably have to be reopened to eliminate the need to comply with the laws of the country where the crews are domiciled.

5

(2)

IF THE UNITED STATES WILL NOT ALLOW FOREIGN NATIONS TO TRY TO EXTEND THEIR LABOR LAWS HERE, WHY SHOULD FOREIGN COUNTRIES DO SO FOR THE U.S.?

They should not permit the U.S. to do it unless the U.S. is willing to offer the foreign government some quid pro quo which we do not recommend.

6

(3)

WHY SHOULD THIS LEGISLATION BE ENACTED IF OTHER LABOR LAWS HAVE NOT BEEN APPLIED OVERSEAS, SUCH AS THE FAIR LABOR STANDARDS ACT?

It should not be enacted as it will make U.S. carriers non-competitive in operations outside of the U.S.

If enacted, rather than base crews outside the U.S., the U.S. carriers may turn over traffic to foreign carriers under code-share arrangements. This will result in the loss of U.S. jobs as foreign carriers will carry traffic that should be moved by U.S. carriers.

7

(4)

WOULD THIS LEGISLATION ULTIMATELY LEAD TO A CONFLICT IN U.S AND FOREIGN LAWS?

Yes, and require government intervention.

(5)

WHO'S LAW WOULD PREVAIL?

We believe for hubs outside the U.S. foreign laws would prevail.

TESTIMONY OF BILL TRENT, GENERAL COUNSEL, INDEPENDENT PILOTS ASSOCIATION, LOUISVILLE, KY

Mr. OBERSTAR. Our final witness is Mr. Bill Trent, General Counsel for the Independent Pilots Association.

Mr. Trent, welcome and thank you for being here.

Mr. TRENT. Thank you for allowing me to be here.

Mr. OBERSTAR. You may deliver your statement in full as prepared or you may summarize it, in which case the complete statement will be in the record.

Mr. TRENT. The statement that was presented was that of Mr. Robert Miller. Mr. Miller cannot be here today. I have prepared a written statement that I would like to summarize, and also have it included in the record.

Mr. OBERSTAR. Without objection, so ordered. You may proceed.

Mr. TRENT. Mr. Chairman, Members of the committee, I am Bill Trent, General Counsel for the Independent Pilots Association, the labor union which represents the 1,500 pilots who fly for United Parcel Service. My appearance here today, as I said, is in lieu of Captain Miller the President of IPA. We certainly appreciate this opportunity to testify.

As I said, the labor organization represents the UPS pilots, and to many people the name UPS invokes the image the familiar brown package car. That familiar image is being added to in the 1990s as UPS grows into a major player in the overnight express air delivery industry.

UPS pilots, IPA members based in Louisville, Kentucky, now fly to and from over 80 U.S. cities, and a growing number of routes between the U.S. and foreign states and routes between foreign countries.

Our association strongly supports the passage of H.R. 4957. We do not support this bill to gain any advantage in collective bargaining. As a union, we have basically achieved our contractual goals in the area of international operations. I think our particular history, however, may be helpful to this subcommittee in looking at the practical aspects of the legislation before you.

In general terms, UPS and IPA have agreed that flying done anywhere in the world by UPS, its parent or any subsidiaries, will be done by our pilots, who are virtually all U.S. citizens, under the terms of the pilot contract. Purely international flying may be done by subcontractors primarily to the extent UPS does not have the legal bilateral authority to use its own crew members.

This is a good agreement. It is good for UPS and it is good for the pilots. We sought the agreement initially to ensure that the expansion of work opportunities for our members as the UPS global operation expands, that is, we would grow with the company. The expansion of American jobs was our goal. UPS agreed and these work opportunities were committed to our pilot group. The parties entered this agreement in good faith in 1991, and that good faith has continued in the administration of, in the administration of this important section of the contract.

I believe our agreement is a good case study that shows UPS labor and management can cooperate in expanding work opportunities for Americans as U.S. carriers increasingly compete in the global marketplace.

All those in this room, I am sure, will agree that the growth of the U.S. companies and American jobs are worthy goals in the public interest.

Even though, however, the parties—in our case—reached agreement on expanding work for U.S. pilots involved in international operations abroad, it is less than certain that our agreement is enforceable under the Railway Labor Act. The court cases that Captain Babbitt and Representative Rahall have alluded to cast doubt on the agreement's enforceability.

Now, both UPS and IPA were very aware of this trend, if you can call it that, in the case law, primarily the Pan Am flight attendant case in 1991 when we negotiated the contract. The parties at that time went to extraordinary lengths to try to ensure that their agreement on international operations could in fact be enforced.

First, the company agreed not to assert as a defense before any court or any arbitration that the RLA does not apply to its international operations. And for your consideration I have appended to my statement this morning a copy of the pertinent section of our scope clause. You can read that for yourself.

While this is an important provision, both parties knew that a Federal Court could conceivably conclude that that Federal Court did not have subject matter jurisdiction to enforce the agreement to arbitrate given the Pan Am case. As a fall back, the parties agreed that the duty to arbitrate was specifically enforceable as well in the State courts.

Of course the possibility exists that the State courts might similarly find that they are without subject matter jurisdiction and theoretically at least we could find ourselves in the same situation as the Pan Am flight attendants. I don't think that is going to happen because I think the parties are dealing with each other in good faith.

And again I bring this case history of the contract between UPS and its pilots really to illustrate a larger point. The present state of Federal case law undermines the Railway Labor Act's and Congress' original policy that parties freely and mutually arrive at their agreements, and that those agreements are binding and enforceable. The RLA does not dictate and neither does this amendment dictate bargaining outcomes. Those are left to the parties.

Today, for example, U.S. pilots are flying UPS aircraft between Cologne Germany and Vienna Austria. These pilots are U.S. citizens, UPS employees, IPA Members. They are flying this route as the result of our scope agreement with UPS and pursuant to the terms and conditions of our contract.

This flying is consistent with the labor laws of Germany and Austria and consistent with our bilateral agreements with those countries.

And just in summary, I would say that U.S. carriers, and their flight crew employees should be allowed to negotiate the expansion of work opportunities for American workers to the greatest extent possible. The parties having freely entered into these agreements should be able to rely on a comprehensive and uniform scheme of dispute resolution mandated by Congress with the Railway Labor Act.

Again, I thank you for this opportunity to testify, especially Representative Rahall for your efforts in sponsoring the legislation, and would be glad to take any questions at this time.

Mr. OBERSTAR. Thank you very much for your testimony and your introduction of some new information here that did not appear in previous testimony, specifically your reference to the scope agreements on page 5 of your testimony with the operations in Germany and Austria.

Describe if you would and elaborate more on that scope agreement. What are its terms, what are the terms of the agreement between UPS and the IPA? Does it permit the company to use foreign nationals, for example, who might not be covered by a basic collective bargaining agreement? Elaborate on that if you will.

Mr. TRENT. There would be no restriction on foreign nationals. They would have to come under whoever is hired, be it U.S. citizens or foreign nationals, would have to be hired under the collective bargaining agreement that we negotiate with UPS.

Mr. OBERSTAR. How would the scope agreement in the two countries you cited be changed, if at all, by application of this act, of this bill should it become an act?

Mr. TRENT. This bill, I think what it would do is guarantee the enforceability of our agreement. Again, we really don't have a concern that in our situation we believe that UPS has committed in good faith to this agreement and will live up to it. However, as a matter of law, we believe that all agreements under the Railway Labor Act should be enforceable under the mechanisms of the act and I think the bill merely clarifies what has been the long-standing application of the act.

Mr. OBERSTAR. Do you know if UPS has taken a position on this legislation?

Mr. TRENT. I asked UPS yesterday, I informed them that we would be up here and asked them if they had, and they said they had not taken a position as yet.

Mr. OBERSTAR. It is interesting, only one major carrier has come here in opposition. The others are the charter operators. Previous testimony—in previous testimony one of the witnesses said that application of this act to current operations would embolden pilots' unions and flight attendant unions to negotiate more vigorously, more aggressively and go beyond current agreements, and it is just that wet leases be covered. Do you that will change the negotiating landscape?

Mr. TRENT. I don't think it would at all, because the presumption that we went under in 1991, talking about the union's presumption, is that the company's international operations were a mandatory subject of bargaining.

I will not at all speak for UPS, but I am sure that they did not share that opinion. That, however, did not keep us from asking for the scope coverage at the table, and as it worked out, we came to agreement on that. So I can't see that would have been any more emboldened in 1991 had this legislation already been in place than we were.

Mr. OBERSTAR. You said that during negotiations there was disagreement between IPA and UPS over whether UPS had to bar-

gain over foreign flying operations. How was that disagreement resolved?

Mr. TRENT. There was not a strenuous disagreement, there were some comments exchanged to the table to the effect that, well, we don't believe we are covered, that it is a mandatory element of bargaining, however, that was a passing comment and we went directly on to negotiate the scope clause that we did.

Mr. OBERSTAR. I will defer at this point to Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman.

Mr. Trent, I appreciate your testimony as well. And I believe you have added another aspect, a positive aspect, to today's hearing record.

I would only just reemphasize the point that you have made on page 2 of your testimony in which you state: Yet as the law now stands, it is possible that we can win a commitment regarding foreign operations in bargaining, have the rights vindicated by an arbitrator and then have a court refuse to require the carrier to comply with its own agreement.

That is I think one of the reasons that led to the introduction of this legislation by this particular Member, is the fact that we do need to eliminate these contrary court decisions. We have found, as you further state in your testimony, that the requirements found by some courts on the applicability, RLA, makes no sense in the present era of global operations and global competition and merely serve to encourage bad faith and illegal conduct. So I guess I don't have a question but just merely to reemphasize that point that you have made about the contrary court decisions and the need for this legislation to clarify that.

Mr. TRENT. Thank you.

Mr. RAHALL. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Mr. Mica.

Mr. MICA. Thank you, I am sorry I got here a few minutes late. I was running to provide a quorum in another committee.

Mr. OBERSTAR. No need to apologize. All of us are pulled in many directions in the last hours of the session.

Mr. MICA. I appreciate your understanding.

Let me ask you, if I may, what the—what type of fiscal impact would this legislation have in your estimation as far as impact on airlines or commercial carriers or whatever?

Mr. TRENT. I am most comfortable speaking with what impact it would have on the relationship between IPA and UPS. I don't see that it would have an impact. I think we have come to an agreement. I think both parties are committed to the agreement.

The reason that I am here, and I think the reason that ALPA is supporting this legislation, is merely to reinforce the point that perhaps should not need reinforcing, that the Railway Labor Act, the dispute resolution procedure should apply to all disputes. There shouldn't be American workers, American companies, just by, I think Captain Babbitt said, by accident of geography that are not covered by the protections of the act.

Mr. MICA. It is my understanding this bill would be very unusual since other U.S. labor laws such as the Fair Labor Standard Act

only apply in the U.S. and not overseas. How would you justify changing this current practice just for pilots and flight attendants?

Mr. TRENT. Well, I think, and again I am not intimately familiar with the non-application of the Fair Labor Standards Act overseas, I think there is a very big distinction between applying any U.S. act to, for example, the ground employees that are foreign nationals that are based in a foreign country, which this amendment would not do. It is merely to the flight crew members and because of the mobility of the flight crew members, we believe that really it is more analogous to an extension of domestic system than it is strictly foreign nationals work working in their own country.

Mr. MICA. Well, under this bill, as I understand it, we are asking other countries to accept our labor laws when other countries labor laws don't apply in the United States. In fact, the U.S. would have a hard time allowing a foreign national to extend its labor laws here.

How can we ask a foreign countries to accept our labor laws when we aren't willing to accept theirs?

Mr. TRENT. I just don't agree with that. For example, I think the testimony has been that Lufthansa bases pilots in the U.S. and it is the Lufthansa contract that is negotiated in Germany and governed by German labor law that is applicable to those pilots. Similarly—it is also true for our UPS pilots. They are not based in Europe but they fly intra-urope. We are not in violation of any European labor law, not in violation of any bilateral between the U.S. and Germany or the U.S. and Austria, so I think in the case of airline pilots and aircraft crews, that is not a problem.

Mr. MICA. Well, I didn't hear your testimony, but I believe you either submitted or said that this legislation is needed and, quote, "in the present era of global operations and global competition," end quote. However, the opponents of this bill claim it will increase costs, and I asked you previously about costs, and make them less competitive overseas.

Is your organization willing to support this legislation even if it means a reduction in jobs?

Mr. TRENT. Well, certainly in the case of UPS, they did not feel that it would lessen their ability to compete in the global marketplace. Again, I am not purporting to speak for UPS, but I don't believe they would have agreed to the scope provision they agreed to if they thought it was going to lessen their ability to compete.

And, in fact, I think as the questioning between the FedEx representative and Mr. DeFazio presented, that really it could help U.S. carriers in that there is a uniform application of laws. You don't have the problem of one law applying to a crew member and then he traverses the national boundary and, all of a sudden, another law applies which can be terribly complex and burdensome to companies. And so I would not expect that it would affect the ability to compete.

Mr. MICA. Well, one—one of the provisions, or some of the provisions of this bill, I understand, indicate that we would lose millions of dollars in revenues and potential job losses, and in the precarious situation that we find our airlines today, I am not certain if that is what you want to do. Is that——

Mr. TRENT. Well, of course, the major airlines are not here and I don't know why that is and I don't know what their position on this amendment is. The carriers that have testified I think have been primarily talking about their wet-lease operation, which, again, I am not an expert on that. But I think the point has been made that whether or not that operation is included is the subject of bargaining, Mr. Rahall's amendment does not dictate the outcome of bargaining.

Mr. MICA. Well, again, I just have questions at this particular time with the fiscal strength of some of our airlines and other carriers, the impact both again in jobs and costs, and I am very hesitant to get involved in any areas that might sink another ship or airline or business in this atmosphere.

Mr. TRENT. I appreciate those comments.

Our feeling was that actually it represented an expansion of work opportunities for American workers and that is why our negotiations went the way they did with UPS.

Mr. MICA. Mr. Chairman, I yield back.

Thank you.

Mr. OBERSTAR. Thank you, Mr. Mica.

If this legislation were enacted, and as some previous witnesses suggested, retaliation were undertaken by other countries to have mirror legislation, would—what would be the position of the IPA on a foreign country applying its labor laws to foreign air carrier pilots who are U.S. nationals stationed out of a U.S. base.

Mr. TRENT. I don't think we would like that, you know, especially if we are talking about the People's Republic of China and some of the other sterling examples that have been mentioned. However, I think that is a hypothetical that has not proven to come about.

I mean, with the example of the FedEx base in France, I think the FedEx representative testified they administer that under their American corporate policies. It is not French labor law that they have to contend with, and that France has made no attempt to assert its labor law on those FedEx pilots that are based in France, so I think we may be chasing ghosts; what if we are overly concerned that foreign states have an interest in applying their labor laws to U.S. pilots overseas? I know there has been no attempt in the case of our operations, which I gave the example of Germany and Austria. We also have UPS pilots that are flying to Seoul, Korea, Japan, between Seoul and Hong Kong and again there has been no attempt by those states to assert their labor laws in this context.

Mr. OBERSTAR. The previous panel's testimony centered around wet-lease operations. Is that a—how significant a thing, in your view, is the wet-lease issue? Now, Tower—no, World Airways said that wet leasing represents 40 percent of their operations. Does that mean 40 percent of their crew time is covered by wet leases?

Mr. TRENT. I mean, I assume, we do not—I do not deal with that on any type of daily basis, certainly. Having heard the testimony, I think one of the ALPA witnesses testified, and I think that is correct, that any question or any exemption that is needed by a carrier, and I think United was cited was one example, can certainly be negotiated between the parties. We have absolutely no interest

in trying to assert our work rules in places where they cannot be legally be asserted.

Mr. OBERSTAR. But if a country insists that in a wet-lease operation its nationals form the crew and it is a question of whether either country complies—I mean, either the airline complies with the host country's rules or they don't fly that operation.

Mr. TRENT. Well, if I had to put a management hat on and think what would I do if I owned an airline and I wanted to operate those pilgrimages to Mecca, I think I certainly would not enter into a labor agreement committing that work to people who could not perform the work. Again, it is a matter of what the parties agree to.

Mr. OBERSTAR. Are there many such situations that you know of?

Mr. TRENT. Again, we are in an area that—you know much more about in area than I do.

Mr. OBERSTAR. That is a question I intended to pursue with the previous panel and I just got distracted by other questions and didn't pursue that matter.

Mr. TRENT. The only way subcontracting comes up in our case is UPS will subcontract under certain circumstances they are allowed within our scope clause.

Mr. OBERSTAR. But certainly if you as a representative of the union determined that it is important to the overall health of the carrier that it be allowed to negotiate wet leases in which foreign nationals operate the aircraft, you can so negotiate.

Mr. TRENT. Exactly, and we have. As I said, our scope clause in very basic fashion says that we fly anything that we can legally fly. If UPS has a work opportunity that cannot legally be committed to us, then UPS is free to subcontract that out. It is not a restriction.

Mr. OBERSTAR. You are not going to negotiate against your own best interests.

Mr. TRENT. Haven't done it so far.

Mr. OBERSTAR. All right.

I don't have any further questions.

Mr. MICA. I do not have any further questions.

Mr. OBERSTAR. Thank you very much, Mr. Trent, we greatly appreciate your participation here today.

Mr. TRENT. Mr. Oberstar, thank you.

Mr. OBERSTAR. On this occasion of the last hearing of the Subcommittee on Aviation for this Congress, I don't anticipate any other hearing coming up.

I want to express my great appreciation to the staff on the Majority side, Mr. Heymsfeld, Mr. Traynham, Mary Walsh, Caroline Gabel for the splendid job they have done all through this Congress, and hard work and long hours put in, and David Schaffer, Donna McLean on the Minority side who have been hard workers as well, put in the same long hours and made splendid contributions very grateful and indebted to you, and Ed Feddeman, yes. And Amanda, all right. Let me not neglect Gretchen and Mary Beth on our side. If I didn't have all the names written down, I knew I would forget somebody.

I just want to say it has been a splendid team, we have worked together and we have crafted superb legislation, pioneering legisla-

tion, in some respects. But good for aviation and we have succeeded in advancing the cause of aviation and aviation labor and keeping America preeminent in this field where we are preeminent.

Thank you very, very much,

Mr. MICA. Mr. Chairman, I just want to echo those comments, and particularly thank the staff on both sides. I have really enjoyed working on Public Works and especially in subcommittee. It does show what Members working together towards a common goal can achieve, and it is working in the best interests of the country and a great industry that we have in this Nation both from a manufacturing to commercial aviation and all aspects of aviation.

We have met some challenges, there are still many out there, in the next session, I look forward to working with you. Again, in a bipartisan effort. Our issues transcend partisan political lines and I think we have shown that together we can do some things to help improve this industry that so many people are counting on in this country. So I commend you again, enjoyed working with you, especially, again the staff who have just been super, and compliment again everyone on this committee. And I don't always—I am not light with my compliments often. Sometimes I am heavy with my criticism, but this does certainly warrant my commendation and respect.

Thank you.

Mr. OBERSTAR. On that positive note, the subcommittee stands adjourned.

[Mr. Costello's prepared statement follows:]

[Whereupon, at 1:37 p.m., the subcommittee was adjourned.]

JERRY F. COSTELLO
12TH DISTRICT, ILLINOIS

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Congress of the United States

House of Representatives

Washington, DC 20515-1312

OPENING STATEMENT OF CONGRESSMAN JERRY F. COSTELLO

SUBCOMMITTEE ON AVIATION

HEARING ON H.R. 4957, TO AMEND THE RAILWAY LABOR ACT FOR FLIGHT CREWS OF U.S. CARRIERS ENGAGED IN OVERSEAS OPERATIONS

OCTOBER 5, 1994

Mr. Chairman, I want to thank you for calling today's hearing on H.R. 4957, Congressman Rahall's bill to amend the Railway Labor Act for coverage of flight crew members employed by United States' airlines. This coverage would apply for employees regardless of where they are based and whether they perform their duties within or outside the United States. As a cosponsor of this legislation, I look forward to convincing my colleagues of the bill's importance.

If the bill were enacted, when pilots or flight attendants of a U.S. airline select a collective bargaining representative, the airline would be obligated to bargain collectively with that representative even if the employees do not work on flights serving the U.S. Because the courts have not consistently decided cases involving enforcement of collective bargaining agreements covering employees of U.S. companies in foreign countries, this legislation is necessary.

It simply does not make sense to cover employees of a U.S. carrier for a flight from St. Louis to London, but not from London to Frankfurt. Therefore, I ask my colleagues on the Subcommittee to join me in supporting this legislation.

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BELLEVILLE, IL 62220
TEL. (618) 233-8028
FAX (618) 233-8785

☐ 1383 NIEDRINGHAUS AVE
GRANITE CITY, IL 62040
TEL. (618) 451-7085
FAX (618) 451-2128

☐ 280 W CHERRY ST
CARBONDALE, IL 62901
TEL. (618) 529-3751
FAX (618) 549-3788

☐ 8787 STATE ST
EAST ST LOUIS, IL 62203
TEL. (618) 357-8833

☐ 1330 SWANWICK ST
CHESTER, IL 62233
TEL. (618) 826-3043

Statement of

Captain J. Randolph Babbitt, President

Air Line Pilots Association

Before the
Subcommittee on Aviation
Committee on Public Works and Transportation

U.S. House of Representatives
October 5, 1994

Good morning. I am Randy Babbitt, President of the Air Line Pilots Association (ALPA). I am also the Vice President of the the Transportation Trades Department of the AFL-CIO, and have served as a member of the National Commission to Ensure a Strong Competitive Airline Industry. With me today are Duane Woerth, ALPA's First Vice President, who has primary responsibility for overseeing the development of our policy on international issues, and Russell Bailey from ALPA's Legal Department.

ALPA represents over 42,000 pilots at 36 airlines, many of which are increasingly engaged in flight operations outside the United States. I appreciate the opportunity to appear before this subcommittee today to present ALPA's views on H.R. 4957. This bill would confirm that the Railway Labor Act applies to air carriers and their flight crews. -- their pilots and flight attendants -- while they are engaged in international operations. We believe the measure is a timely effort to dispel any confusion about the application of the Act and collective bargaining agreements to the international operations of U.S. airlines.

U.S. airlines that perform flying outside the United States have traditionally established the terms of employment for their flight crew members through collective bargaining agreements negotiated under the Railway Labor Act. These carriers and their employee representatives have long recognized that they cannot create an efficient global operation and maintain stable labor relations if the application of the Act and collective bargaining agreements depend upon the accident of geographic location as their aircraft navigate global airspace.

Thus, U.S. airlines and their labor unions generally have proceeded as if the Act and the labor contracts follow their aircraft and their flight crews in both domestic and international operations regardless of their point of operation at any given moment. This historic understanding only makes sense. A crew of United Airlines pilots, for example, might fly an international trip that originates in Chicago with stops in New York, Paris and Brussels. The application of one contract and one set of labor laws to this flight operation promotes stable labor relations and the continued growth of U. S. airlines. As a result, United, Delta, USAir, Northwest and American Airlines, among many others, have all negotiated pilot contracts that cover all flight operations worldwide.

Foreign airlines have followed this rule as well. A Lufthansa pilot, for example, continues to be governed by the working conditions established under German labor law when his

airline flies passengers or cargo to a United States city or from a U.S. gateway city to a point in a third country.

As the United States seeks to maintain a competitive edge in the expanding global economy, U.S. airlines will be increasingly called on to serve the nation's needs by carrying passengers and cargo between points outside the country. In the last decade, U.S. airlines have vastly expanded their international route systems. With improved technology and diminished regulatory barriers U.S. airlines have expanded their so-called "beyond" operations -- flights from one foreign destination to another that are integrated into global networks anchored in the United States. And as the flight operations of United States carriers become more global in scope, airlines and their employees have devoted greater attention to negotiating contract terms applicable to flight operations outside the United States.

The international operations of U.S. airlines are thoroughly integrated into their domestic and transnational operations, and we do not believe that Congress ever intended to exclude these operations from the system of collective bargaining under the Act. A handful of court cases, however, has held that the Railway Labor Act does not cover flying that takes place between two foreign points. These cases have created needless doubt about the embrace of the Railway Labor Act and threaten to undermine the fundamental policies of the Act itself.

First, the Act expresses a strong preference that classes of employees such as pilots or flight attendants be represented on a

systemwide basis. In other words, when the pilots of an airline select a representative for collective bargaining purposes, that representative represents all the pilots of the airline. The court cases at issue run contrary to this principle. H.R. 4957 would preserve the Act's preference for systemwide collective bargaining agreements.

Second, these court cases also undermine the central purpose of the Railway Labor Act -- to prevent the interruption of vital transportation services by requiring airlines and their employees to negotiate labor agreements through collective bargaining and to resolve disputes over labor contracts through binding labor arbitration. Without clarification from Congress, these cases call into question whether pilots and flight attendants employed by U.S. carriers are governed by the Act's restrictions on strikes and other forms of labor unrest while they are engaged in international operations, and whether flight crew employees of U.S. airlines can negotiate and enforce collective bargaining agreements governing international operations of U.S. air carriers as they have for years.

H.R. 4957 eliminates the confusion created by these cases by confirming that the Railway Labor Act covers flight crews employed by U.S. airlines who happen to be based overseas while engaged in flying outside U.S. airspace. The proposed amendment has been narrowly drawn to accomplish this purpose.

First, the proposed amendment only applies to U.S. air carriers, a term defined in the U.S. transportation laws. Thus,

it does not apply to flight crews of foreign carriers or to employees of any other form of carrier under the RLA.

Second, the proposed amendment applies only to flight crew employees -- pilots and flight attendants -- who are the employees engaged in the actual operation and service aboard the aircraft as they traverse international boundaries in global operations. The amendment leaves untouched the labor relations arrangements applicable to foreign nationals employed by U.S. air carriers to provide ground service and related services at foreign airports. Such ground service employees are frequently represented by unions in their home countries under the laws of those countries.

Third, the proposed amendment does not affect the ability of U.S. airlines and their flight crews to adopt special provisions governing international operations or foreign-based flight crew members through collective bargaining under the Act. For example, several U.S. airlines have reached collectively-bargained agreements that apply different wages and work rules to flight attendants hired overseas to perform purely foreign flying. The proposed amendment is designed to preserve and strengthen the ability of U.S. airlines to adopt such solutions through collective bargaining.

Finally, the proposed amendment does not interfere with the rights of foreign states. The United States has a substantial interest in the uniform application of its labor laws to the highly mobile flight crew operations of its own air carriers.

Foreign states, by contrast, have little, if any, interest in application of their labor relations laws to such U.S. air carrier flight crews. In this regard, the proposed amendment tracks the longstanding application of U.S. labor laws to crew members on U.S. maritime vessels. In that arena, the U.S. has declined to assert jurisdiction over labor relations on foreign flag vessels even when they are operating in U.S. waters. On the other hand, the U.S. has asserted, with court approval, jurisdiction over labor matters on U.S. flag vessels when those vessels are operating or even based in foreign waters.

That concludes my oral presentation. Again, I thank you for the opportunity to appear here today, and we would be happy to respond to any questions you may have.

DOYLE CLOUD

September 27, 1994

U.S. Mail Box 727
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STATEMENT OF OPPOSITION TO PROPOSED EXTRATERRITORIAL EXTENSION OF RAILWAY LABOR ACT

Federal Express opposes amendment of the Railway Labor Act (RLA) to extend coverage to overseas operations of U.S. air carriers for the following reasons:

1. The proposed legislation is a transparent attempt by the Air Line Pilots Association (ALPA) to obtain congressional assistance in its current negotiations with Federal Express by mandating terms ALPA has sought to negotiate. In negotiations for an initial collective bargaining agreement with Federal Express, ALPA has proposed a scope clause that would cover entirely foreign flight operations. ALPA also has requested meetings with Federal Express officials to discuss overseas airport facilities. Under current law, the parties may but are not required to negotiate over a number of these issues. The proposed legislation would tip the balance of negotiations by changing the rules in the middle of the game. Mandating negotiations over foreign domicile operations would unnecessarily prolong negotiations and could permit the parties to use their economic power in the United States over issues that have no connection with this country.

2. Enactment of the proposed legislation presents a real potential for dragging Congress into foreign labor disputes. If a carrier and its employees are unable to resolve a major dispute and the procedures of the RLA have been exhausted, Congress may be asked to legislate resolution of the dispute. *See Maine Central R.R. v. BMWE*, 835 F.2d 368 (1st Cir. 1987). Extraterritorial extension of the RLA, therefore, raises the prospect of Congress being asked to legislate settlement of labor disputes in foreign countries that would affect foreign nationals. If, for example, a foreign government required a U.S. carrier to maintain a complement of foreign nationals on its crew force in order to continue the foreign domicile, Congress could find itself prescribing labor conditions in the foreign domicile that would affect both the carrier's U.S. and foreign employees.

3. The proposed legislation would violate international law restrictions on the application of one country's laws within the borders of another country, and violate the terms of at least 28 bilateral commercial aviation treaties.

Recognized principles of international law prohibit the exercise of jurisdiction by one nation over labor conditions within another nation. This principle has been recognized by U.S. courts under the RLA and the National Labor Relations Act. It is embodied in comments to Sections 403 and 414 of the Restatement (Third) of Foreign Relations Law. Comment c to §414, regarding jurisdiction over foreign branches and subsidiaries, states "jurisdiction may be exercised . . . over activities of a branch or subsidiary related to international transactions . . . but not generally over predominantly local activities, such as industrial and labor relations, . . ." Section 403 reporter's note 4, which describes limitations on a country's exercise of extraterritorial jurisdiction is particularly instructive. This note states as follows:

> Suppose the United States government were considering regulation of a foreign-flag charter air carrier that takes passengers to and from the United States. Assuming no governing international agreement, the factors listed [in §403(2)] would indicate low justification for regulating wages of the crew . . . As the foreign carrier becomes more extensively or permanently linked to the United States . . . it might become reasonable to subject additional aspects of its activity . . . to the jurisdiction of the United States.

It is clear, then, that the legality of extraterritorial jurisdiction depends on the level of activity occurring in the regulating country. Wholly foreign flight operations of a U.S. carrier have substantially less connection with the United States than the operations of a foreign-flag carrier that flies passengers to the U.S. Accordingly, the justification for attempting to regulate wholly foreign operations of a U.S. carrier operating through a foreign domicile is even lower than for the foreign-flag carrier in the reporter's example.

The territorial nature of labor regulation is reflected in at least 28 bilateral U.S. commercial aviation agreements. For example, the Air Transport Agreement, Nov. 7, 1986, United States-Netherlands (Aruba, Netherlands Antilles), C.T.I.A. No. 4740.000, governing commercial air operations between the U.S. and Aruba, specifies that:

> The designated airlines of one Party may, *in accordance with the laws and regulations of the other Party* relating to entry, residence and *employment*, bring in and maintain in the territory of the other Party managerial, sales, technical, operational and other specialist staff required for the provision of air transportation. (emphasis added)

Extension of the RLA abroad would require renegotiation of this and all similar commercial aviation agreements. (Appendix A is a list of countries with which the United States has similar agreements.) The conflict of laws is not merely theoretical. Applicable Dutch and

Aruban labor laws differ greatly from the RLA. In Aruba, the law does not recognize the concept of exclusive bargaining representatives. Employees in a bargaining unit may belong to different labor organizations and the employer must bargain with each of them. Union dues may not be withheld from an employee's pay unless he or she individually authorizes the deduction, regardless of the provisions of an applicable labor agreement. Employer financial assistance to labor organizations is not prohibited and, in fact, commonly occurs. These differences would require substantial renegotiation because the bilateral nature of the agreement, if it simply were reversed, would result in the application of Dutch and Aruban labor laws to Aruban flight crews domiciled in the U.S. This result, of course, would conflict with present U.S. law which, absent contrary agreement, applies U.S. law to foreign flight crews domiciled in the U.S. *See Air Line Pilots Ass'n Int'l v. TACA Int'l Airlines*, 748 F.2d 965 (5th Cir. 1984).

For the foregoing reasons, Federal Express opposes the proposed legislation.

APPENDIX A

Argentina

Aruba

Australia

Austria

Barbados

Belgium

Brazil

Chile

Dominican Republic

Costa Rica

Luxembourg

Czech and Slovak Federal Republic

Ecuador

Finland

France

Germany

Greece

Guatemala

Hungary

Israel

Jamaica

Jordan

Peru

Russia

Saudi Arabia

Taiwan

Trinidad and Tobago

United Kingdom

STATEMENT OF

EDWARD J. DRISCOLL

PRESIDENT AND CHIEF EXECUTIVE OFFICER

NATIONAL AIR CARRIER ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

H.R. 4957

AMEND THE RAILWAY LABOR ACT

OCTOBER 5, 1994

NATIONAL AIR CARRIER ASSOCIATION, INC.
1730 M St., N.W.
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Washington, D.C. 20036
(202)833-8200

Mr. Chairman, Members of the Committee, NACA and its member carriers are pleased to have this opportunity to set forth their views with respect to the provisions of H.R. 4957.

The thrust of this bill is to subject flight operations and flight crewmembers who operate air transportation in whole or in part outside of the United States to the provisions of the Railway Labor Act.

The proposed amendment to such Act, as set forth in this bill, would adversely impact the NACA carriers since they perform substantial operations under wet lease to foreign air carriers who are not subject to the Railway Labor Act.

Under wet-lease operations, while all flight attendants must be trained and meet all of the standards required by the Federal Aviation Regulations, in most instances the carrier for whom the wet lease is being performed mandates as a condition of bid the use of flight attendants employed by that carrier.

There have been many occasions where a national carrier for reasons of language as well as representation has insisted that the flight attendants serving aboard the aircraft be those employed by the national carrier.

One of the major operations that NACA carriers as well as other carriers engage in, is the Hajj. The Hajj, as you know, is a pilgrimage to Mecca prescribed as a religious duty for Muslims. This airlift program, involving the transportation of approximately two million pilgrims, is estimated at approximately $500 million per year involving substantial numbers of aircraft. It operates from countries where Muslims represent a high percentage of the population, such as, Indonesia, Malaysia, Pakistan, Saudi Arabia, to name just a few. The operation is conducted over a limited period and falls in the low period as far as the U.S. carriers are concerned which enables them to apply substantial resources to this program in advance of the high summer program that they normally engage in.

The national carriers of the countries involved have the right to operate this service and do so in part with their own aircraft as well as wet-leased aircraft from carriers of other countries.

U.S. carriers; namely, the NACA member carriers, participate in this program on a recurring basis year by year which enables U.S. carriers to earn substantial revenues in a short time frame. We estimate these revenues in excess of $125 million dollars per annum.

The wet-lease agreement requires that the lessor provide its own cockpit crews but utilize flight attendants (cabin crews) employed

by the lessee national carrier. These cabin attendants, while employees of the national carrier, are trained in accordance with the FAR's program for flight attendants and are fully qualified prior to serving aboard the aircraft in accordance with U.S. standards and aircraft peculiarities.

The U.S. carriers who want to compete must agree as a condition of bid to use the assigned flight attendants since they are schooled in religious ceremonies covering the Hajj as well as having the language capability to enable them to communicate in the native language which is essential for the safety of flight. U.S.-trained flight attendants cannot be used.

Should the provisions of H.R. 4957 be enacted into law, extending the provisions of the Railway Labor Act to flight crews operating outside of the United States, in whole or in part, such would make it impossible for U.S. carriers to participate in this program and therefore U.S. carriers would lose valuable revenues substantially injuring their ability to support the national interest as well as national defense.

In addition, there are other wet lease operations, both cargo and passenger, that the NACA carriers engage in during various periods of the year. These likewise, in whole or in part, are outside of the United States and should not be subjected to the Railway Labor Act amendment, as proposed, as this would impact the competitive

position of U.S. carriers in competing with foreign carriers for these operations.

There have been, and probably will be, other charter programs that will be operated for foreign tour operators between two or more foreign countries. These will transport nationals of various countries with a particular language which will necessitate the use of flight attendants who have that language capability and can satisfy the requirements of the contracting tour operator. In those instances properly trained foreign flight attendants again must be used in order to ensure that U.S. carriers are competitive with foreign carriers who vie for these operations.

For the reasons set forth above, Mr. Chairman, we would hope that this committee would not favorably report this legislation as the amendments proposed would seriously impact upon the carriers:

(1) Who are relatively small in size compared to the major carriers throughout the world;

(2) Who provide air transportation programs in support of national defense and the commerce of the United States; and

(3) Who provide service throughout the world in competition with other foreign carriers requiring them to have the

flexibility to utilize local personnel as flight attendants trained in various religious and/or national aspects of the transportation as well as having the language capability necessary to enable communication with the passengers transported.

That concludes our prepared statement. We stand ready to answer any questions you may have.

STATEMENT OF

STEPHEN L. GELBAND

ON BEHALF OF

TOWER AIR, INC.

BEFORE

THE SUBCOMMITTEE ON AVIATION

of the

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

of the

UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 5, 1994

Stephen L. Gelband
HEWES, MORELLA, GELBAND
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Organization represented:
TOWER AIR, INC.

STATEMENT OF
STEPHEN L. GELBAND
ON BEHALF OF
TOWER AIR, INC.

October 5, 1994

Tower Air, a carrier that operates B-747 scheduled and charter services throughout the United States and to dozens of international destinations, is extremely concerned about the adverse economic impact of H.R. 4957 on its international operations. If this bill becomes law, Tower Air will no longer be able to compete for many international charter and wet-lease programs which it has operated in the past. In the not-very-long-run, this will mean reduced Tower Air operations -- and numerous lost jobs.

As the committee is aware, competition for charter and wet-lease operations is extremely strong, not only among U.S. carriers, but between U.S. carriers and foreign carriers around the world. One example is the Hajj operations which are conducted annually by numerous airlines to carry religious pilgrims to Mecca. Last year, Tower Air operated five aircraft on a wet-lease basis for Garuda International Airlines' Hajj charters, and received approximately $25 million in revenues for these operations.

A condition of this and most other wet-lease programs is that while the lessor carrier is required to provide the aircraft and flight crew, the lessee carrier requires that it supply its own cabin attendants. This is done so that the crew

members dealing directly with passengers will always be able to speak the local language and understand the local secular and religious customs.

Virtually the same scenario exists with respect to foreign point-to-point charter programs; for example, charter flights operated between Copenhagen and Nice, or between Paris and Tahiti. Typically, these also are operated utilizing local cabin crews for the same reasons.

If H.R. 4957 is adopted, however, all cabin attendants on all wet-lease or foreign point-to-point charter services operated by U.S. carriers will have to be union-eligible employees of the operating carrier. Tower Air -- and all other U.S. carriers -- thus, will no longer be able to meet the requirements of foreign wet-lessees and charterers for locally-based flight attendants, and virtually all future business of this nature will, of necessity, go solely to foreign airline competitors.

In the past, these types of operations have been a significant segment of Tower Air's operations and they have supported the paychecks of numerous Tower Air employees, from pilots and flight engineers to mechanics and stock clerks. If Tower Air must use its own flight attendants, or pay them for not flying, whenever it conducts wet-lease operations for foreign carriers or operates charters between foreign points, Tower's cost of operations -- and, hence, the price it can bid for the business -- will necessarily be higher than that of the many

foreign carriers that are also competing for the same business. H.R. 4957, thus, will almost certainly cause U.S. carriers to be priced out of competition for a large segment of their current business.

Tower Air, thus, strongly urges this committee not to recommend that this bill become law.

Thank you very much for this opportunity to present the views of Tower Air on this important legislation.

WORLD
AIRWAYS

Charles W. Pollard

September 30, 1994

Representative Jim Oberstar
Chairman
Aviation Subcommittee
House Rayburn Building
Washington, D.C.

RE: H.R. 4957

Dear Chairman Oberstar:

I have only recently become aware of the proposed legislation contained in the Bill H.R. 4957. The Bill purports to extend the applicability of the Railway Labor Act to air carrier operations and flight crew members worldwide. On behalf of World Airways, Inc. ("World"), I would like to go on record as opposing this Bill. Further, World is a member of the National Air Carrier Association ("NACA"), and supports the separate written statement and upcoming testimony by NACA concerning this proposed legislation.

World is a certificated Part 121 carrier located at Washington Dulles International Airport and performing worldwide scheduled, charter and wet-lease operations. World has approximately 800 employees, of whom roughly one half are represented by a labor organization under the Railway Labor Act (the "Act").

The general purpose of the Act is twofold: first, to avoid interruption to commerce or to the operation of any air carrier; second, to focus on the employees' right of self organization and to restore equality of bargaining power between employees and employers. H.R. 4957 not only runs counter to these fundamental premises of the Act, but has the added liability of potentially weakening the competitive position of U.S. carriers vis a vis foreign carriers in international commerce.

It would appear the objective of H.R. 4957 is to erode the sanctity of contractual labor agreements negotiated under the auspices of the Act. This is extremely disturbing inasmuch as World has just concluded a long term labor agreement with its pilots and is presently engaged in contract negotiations with the flight attendants. World's opportunity to successfully negotiate with cockpit and cabin crewmembers to establish a foreign base(s) and crew the base(s) with some percentage of nationals from the country or region where the base(s) is located, and further negotiate the right to employ some or all of those foreign national as non-union employees, is threatened by H.R. 4957. This Bill seems to say that regardless of any agreement between labor

and management to the contrary, all foreign national crewmembers must be covered by the scope clause of the labor agreement and represented by the applicable union. As suggested above, this strikes at the heart of collective bargaining by substituting government fiat in the place of mutual labor/management agreement. Moreover, instead of furthering the objectives of the Act to prevent labor strife and equalize bargaining power, the Bill could encourage such strife by pre-deciding some issues in favor of one of the two parties and possibly imposing an unacceptable organized labor regime at foreign bases on the other.

Finally, the proposed legislation could undermine the competitive position of U.S. carriers operating overseas. As mentioned above, World frequently operates wet-lease services for U.S. and foreign carriers. For example, within the next two weeks, World will perform inaugural services between Accra, Ghana and New York under a long term wet-lease agreement with Ghana Airways.

Very often the wet-lessee (foreign carrier) will insist for cultural, language, religious and/or service reasons that the cabin service for passenger flights be performed by its own cabin attendants--provided the cabin staff is properly reviewed and certificated by the U.S. Federal Aviation Administration (FAA). Not unexpectedly, this is the position of Ghana Airways; and if the situation were reversed, and World were the wet-lessee, World would certainly insist on using World flight attendants.

In the case of the annual Hadj religious pilgrimage--which involves the transportation of two million pilgrims to the Muslim holy sites each year--foreign carriers feel compelled to use their own cabin attendants to satisfy certain religious and cultural norms. This year World operated eight wide-body aircraft on behalf of foreign carriers involved in the Hadj pilgrimage.

Even though the present contract between World and the flight attendants clearly permits wet-leases using foreign flight attendants, it could be argued that H.R. 4957, if enacted, overrules the labor agreement and mandates the use of only flight attendants on World's seniority list. Such an interpretation would be devastating to World. In the three years 1991, 1992 and 1993, 23%, 42% and 42% of World's passenger revenues were derived from wet-lease operations where the foreign carrier provided the cabin crew. If World were required to ignore the customers' preference for their own cabin attendants, World and the other U.S. carriers vying for this market would lose the business to foreign carriers not subject to these restrictions. World would be forced to reduce the size of its fleet, causing the loss of high paying U.S. jobs and depriving the Civil Reserve Air Fleet of some of its most capable equipment in time of national emergency.

In short, World believes H.R. 4957 unreasonably interferes with the collective bargaining process, unjustifiably favors organized labor on certain issues, will cause labor disputes rather than resolve them, and will undermine the competitive position of U.S. carriers in foreign air transportation. For these reasons World urges you to reconsider your support for this legislation.

If you or your staff wish to discuss this issue further, please contact Vance Fort, Senior Vice President, Government and Legal Affairs, or myself.

Respectfully,

Charles W. Pollard
President

Statement of William C. Trent
General Counsel
Independent Pilots Association
Louisville, Kentucky

I am Bill Trent, General Counsel of the Independent Pilots Association (IPA) the labor union which represents the 1,500 pilots who fly for United Parcel Service. My appearance is in lieu of Robert Miller, the President of IPA, who could not be here today.

As I said, our labor organization represents the UPS pilots. To many the name UPS evokes the image of the familiar brown package car. That familiar image is being added to in the 90's as UPS grows into a major player in the overnight express air delivery industry.

UPS pilots, also IPA members, based in Louisville, KY, now fly to and from over 80 U.S. cities and a growing number of routes between the U.S. and foreign states and routes between

foreign countries.

Our association strongly supports the passage of H.R. 4957. We do not support the bill to gain an advantage in collective bargaining. As a union, we have basically achieved our contractual goals in the area of international operation. I think our particular history, however, may be helpful to the subcommittee in looking at the practical aspects of the legislation before you.

In general terms, UPS and IPA have agreed that flying done anywhere in the world by UPS, its parent or subsidiaries, will be done by our pilots - who are virtually all U.S. citizens - under the terms of the pilot contract. Purely international flying may be done by subcontractors primarily to the extent UPS does not have the legal/bilateral authority to use its own crews.

This is a good agreement. It's good for UPS and good for

the pilots. We sought the agreement to ensure the expansion of work opportunities for out members as the UPS global operation expands. The expansion of American jobs was our goal. UPS agreed and these work opportunities were committed to our pilot group. The parties entered the agreement in good faith in 1991 and that good faith has continued in the administration of this important section of the contract.

I believe our agreement is a good case study that shows U.S. labor and management can cooperate in expanding work opportunities for Americans as U.S. air carriers increasingly compete in the global marketplace. All in this room will agree that the growth of U.S. companies and American jobs are worthy goals in the public interest.

Even though, however, the parties - in our case - reached agreement on expanding work for U.S. pilots involved in

international operations abroad - it is less than certain that our agreement is enforceable under the RLA. The court cases that Captain Babbit and Rep. Rahall have alluded to cast doubt on the agreement's enforceability.

The parties knew of this trend in the case law in 1991 when our contract was negotiated. The parties went to extraordinary lengths to try to insure that their agreement on international operations could be enforced. First, the company agreed not to assert as a defense an argument that the RLA does not apply to its international operations. (Copies) While this is an important provision, both parties knew that a federal court might conclude, on its own, that it is without subject matter jurisdiction to enforce the agreement to arbitrate.

As a fall back, the parties agreed that the duty to arbitrate was specifically enforceable as well in the state courts. Of

course, the possibility exists that the states courts might similarly find that they are without subject matter jurisdiction.

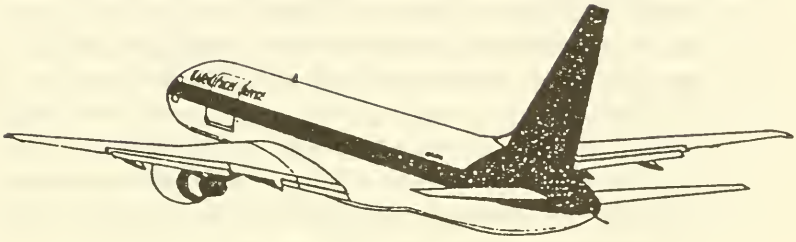
Again, I bring this case history of the contract between UPS and its pilots to illustrate a larger point. The present state of federal case law undermines the Railway Labor Act's (and Congress's) policy that parties freely and mutually arrive at their agreements and that those agreements are binding and enforceable. The RLA does not dictate -- and neither does this amendment -- bargaining outcomes. Those are left to the parties.

Today, for example, U.S. pilots are flying UPS aircraft between Cologne, Germany and Vienna, Austria. These pilots are U.S. citizens, UPS employees, and IPA members. They are flying this route as the result of our scope agreement with UPS and pursuant to the terms and conditions of our contract. This

flying is consistent with the laws of Germany and Austria and consistent with our bilateral agreements with those countries.

In summary, U.S. carriers and their flight crew employees should be allowed to negotiate the expansion of work opportunities for American workers to the greatest extent possible. The parties, having freely entered these agreements, should be able to rely on the comprehensive and uniform scheme of dispute resolution mandated by Congress with the Railway Labor Act.

Thank you for the opportunity to appear before the Subcommittee. I would be glad to take any questions you may have.



AGREEMENT
BETWEEN

UNITED PARCEL SERVICE CO.

and the
AIR LINE PILOTS
in the service of
UNITED PARCEL SERVICE CO.
as represented by

THE INDEPENDENT PILOTS ASSOCIATION

Effective: December 10, 1991

Article 1 continued

5. The parties agree that for the duration of this Agreement no sympathy strike, or observance of picket lines established by employees of a company unrelated to United Parcel Service Co., shall be permitted or authorized by this Agreement. This prohibition shall not be applicable to legal primary picket lines established by employees of the Company, its parent or their subsidiaries or any other employer which is providing a service in connection with the operation of the Company's aircraft. The recognition of any legal primary picket line or sympathy strike allowed under this paragraph must be authorized by the Association. The Railway Labor Act shall govern the parties' rights to take economic action.

6. Nothing in paragraph A.5. above shall require Association members to deadhead, train, or perform any other service, on or for an air carrier which is on strike.

7. It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if a crewmember refuses to perform any service which the Company undertakes to perform as an ally of an employer whose employees are on strike, which service, but for such strike, would be performed by the employees of the struck employer.

B. Purpose

The purpose of this Agreement is, in the mutual interest of the Company, the Association, and the crewmembers in the employ of the Company, to provide for the operation of the Company under methods which will further, to the fullest extent possible, the safety of air transportation, the efficiency of operation, and the continuation of employment of crewmembers under reasonable working conditions and proper compensation. It is recognized to be the duty of the Company, the Association, and the crewmembers to cooperate fully for the attainment of these purposes.

Article 1 continued

C. Scope

1. Domestic Operations

a. The execution of this Agreement on the part of the Company shall cover crewmember operations of all aircraft operated pursuant to the Company's Airline Operating Certificate IPXA 097B, and of all aircraft operated pursuant to any additional Part 121 Airline Operating Certificate acquired by the Company, its parent or any subsidiary of the Company or the parent, in and for the service of the Company, wherever located, presently operating, to be operating in the future, except as otherwise provided in this Agreement.

b. It is agreed that all present and future flying including but not limited to, revenue flying, ferry flights, charters, training flights, test flights, or other utilization of Company owned or leased aircraft in and for the service of the Company, its parent, or any subsidiary of the Company or the Company's parent, shall be performed by crewmembers on the United Parcel Service Crewmember Seniority List in accordance with the terms and conditions of this Agreement or any other applicable agreement between the Company and the Association, except as otherwise provided in this Agreement.

2. International Operations

a. The Company agrees to utilize crewmembers on the United Parcel Service Crewmember Seniority List for the same type flying as described in C.1.b. above in international operations where aircraft are operated pursuant to the Company's Airline Operating Certificate IPXA 097B or any additional Part 121 or foreign equivalent Airline Operating Certificate obtained by the Company.

Article 1 continued

b. In addition to the above, the Company agrees the international operation of all aircraft operated on any Part 121 or foreign equivalent Airline Operating Certificate held by its parent, or any subsidiary of the Company or the Company's parent, shall be performed by crewmembers on the United Parcel Service Crewmember Seniority List.

c. As used in this Article only, international operations shall be limited to flights within a foreign country or between two or more foreign countries. Domestic flying shall include, but not be limited to, flights which originate and/or terminate in the United States.

3. **Exclusions**

Notwithstanding the foregoing, nothing within C.1. and C.2. above shall extend the coverage of this Agreement to aircraft owned by the Company, its parent or any of their subsidiaries which are leased to and operated by another airline. However, such an airline may not be a company as described in C.1. or C.2. above. Further, the terms of this Agreement shall not extend to any aircraft used by the Company, its parent or their subsidiaries for the purpose of corporate/executive air travel. The Company shall have sole discretion over the routing of aircraft and the type of aircraft utilized.

4. **Resolution of Disputes Concerning International Operations**

If any dispute arises as to the interpretation or application of paragraphs C.2., C.3., D.2., or D.3., the dispute shall be submitted to final and binding arbitration in accordance with Article 7 of this Agreement. The Company, the Company's parent, and any subsidiaries of either, the Association, and

Article 1 continued

their successors agree, that in connection with any dispute before an arbitrator or in court, not to raise as a defense the non-applicability of the Railway Labor Act to international operations as defined in C.2.c. above or flights which originate or terminate in the United States. It is also agreed that the provisions of this paragraph are specifically enforceable. The duty to arbitrate as well as the judicial review of any arbitration award under this paragraph shall be specifically enforceable in either the Federal District Court for the Western District of Kentucky or the Jefferson County Circuit Court, Louisville, Kentucky. For these purposes the parties consent to jurisdiction and venue in these courts. The parties further agree that the choice of law in any such proceeding under this paragraph will be Sections 153 and 184 of the Railway Labor Act, 45 U.S.C. Sections 151 et seq. If the Jefferson Circuit Court refuses to exercise jurisdiction, either party may file suit under this paragraph in any state court which has jurisdiction over the parties.

5. If the Company establishes a crewmember domicile outside the United States, the Company may reopen Article 13 of this Agreement, pursuant to Section 156 of the Railway Labor Act, in order to establish different scheduling rules for such international operation. Furthermore, in the event an international domicile is established, the Company and Association hereby agree to meet and resolve any legal or contractual conflicts or problems.

6. In the event any parent, subsidiary or successor in interest of the Company violates any provision of C. or D. of this Article and does not make whole all bargaining unit members and the Association for any and all losses suffered, including lost work and advancement opportunities, as a result of such violation, the Company

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October 14, 1994

The Honorable James L. Oberstar
Chairman, House Aviation Subcommittee
Committee on Public Works and Transportation
2366 Rayburn House Office Building
Washington, DC 20515

Re: House Aviation Subcommittee Hearing on HR. 4957

Dear Chairman Oberstar,

United Parcel Service Co. respectfully submits the following comments to supplement the record of the October 5, 1994 hearing held by the House Aviation Subcommittee on HR. 4957. This bill, as proposed, purports to extend the coverage of certain provisions of the Railway Labor Act (RLA) to United States carriers and flight crews engaged in flight operations outside the United States.

However, as written, HR. 4957 is overly broad when taken in light of statements made at the hearing by Captain J. Randolph Babbitt, President, Airline Pilots Association (ALPA) and Mr. William C. Trent, General Council, Independent Pilots Association (IPA). As pointed out by Mr. Trent, UPS and the IPA have negotiated the issue of how to apply RLA dispute resolution procedures to international operations covered by our collective bargaining agreement. If the intent of HR. 4957 is to insure the enforceability of collectively bargained scope clauses - and not to mandate the applicability of the entire RLA statute to international operations (and therefore change the dynamics of the bargaining positions of the parties) - then, as written, HR.4957 is overly broad and needs to be more narrowly written.

UPS is opposed to any amendment to the RLA that would extend and mandate its coverage beyond the United States and its territories. The law is well settled at this point (see attached statement of Tony C. Coleman, Counsel of UPS); the RLA does not extend to airline operations which occur wholly outside the United States. However, if such an amendment is deemed necessary UPS is willing to work with the subcommittee staff to craft language that achieves the narrower objectives as discussed above.

Thank you for this opportunity to present our comments.

Sincerely,

UNITED PARCEL SERVICE CO.,

Robert H. Frenzel

Robert H. Frenzel
Vice President

wp\bob\oberstar

Statement Of

Tony C. Coleman

On Behalf Of

United Parcel Service Co.

Before

The Subcommittee On Aviation

Of The

Committee On Public Works and Transportation

Of The

United State House of Representatives

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Legal Analysis of Proposed Extension of Railway Labor Act To International Flights

I represent United Parcel Service Co. (UPS), a certified Part 121 air carrier, in connection with labor and employment issues. On behalf and at the request of UPS, I have prepared the following legal analysis of H.R. 4957 as it relates to UPS' international carrier operations and its existing collective bargaining agreement with the Independent Pilots Association. Based on this analysis, UPS opposes amendment of the Railway Labor Act (RLA) as currently proposed by H.R. 4957.

1. The current coverage of the RLA does not extend to flight operations performed in their entirety outside the United States. There have been a number of federal court decisions which have consistently so limited the scope of the RLA's coverage. See, Air Line Dispatchers v. National Mediation Board, 189 F.2d 685 (D.C. Cir. 1951); Air Line Stewards v. TWA, 273 F.2d 69 (2nd Cir. 1959); Air Line Stewards v. Northwest Airlines, 267 F.2d 170 (8th Cir. 1959); and, Flight Attendants v. Pan Am, 923 F.2d 678 (9th Cir. 1991).

2. There are several practical effects of the limitation of coverage of the RLA. Employees of U.S. air carriers who are based and perform their work wholly outside of the United States are not subject to being organized or represented by a U.S. labor organization under the auspices of the National Mediation Board (NMB). Rather, these employees are subject to the labor laws of the country in which they are based. See, Air Line Dispatchers, supra. The requirements of Title I and II of the RLA do not apply to these foreign based employees. Finally, U.S. air carriers are not required by law to bargain with a U.S. labor organization about the terms and conditions of employment of foreign based employees. In effect, an air carrier's legal duty to bargain with regard to work performed outside the U.S. is permissive rather than mandatory. See, Japan Air Lines v. Machinists, 538 F.2d 46 (2nd Cir. 1976).

3. H.R. 4957 as proposed would dramatically alter the current legal obligations and requirements of U.S. air carriers and even the NMB in this area. Bargaining over the terms and conditions of work performed wholly outside the United States would become a mandatory subject of bargaining enforceable in federal courts. The NMB would be compelled to conduct elections and, depending on the results, certify U.S. labor organizations as the bargaining representatives of employees who may be foreign nationals or perform all their work outside the United States. Finally, all the requirements of Title I and II of the RLA (excepting Section 153) would become applicable to these employees.

4. The proposed legislation would legally place UPS and potentially other U.S. air carriers with international flight operations in an untenable and unacceptable position. H.R. 4957 would mandate bargaining and potential agreement on terms and conditions of employment for employees who are subject to the labor and employment laws of the foreign countries in which they are based and perform work. As proposed, the bill does not even limit its application to U.S. citizens working abroad but would include foreign nationals who are clearly covered by the laws of the countries in which they are based. It is legally untenable and unacceptable for UPS or any U.S. air carrier to be mandated to bargain over terms and conditions of employment which may be dictated by foreign laws.

5. In 1991, UPS entered into a collective bargaining agreement with the Independent Pilots Association (IPA) which essentially applies the terms of the contract to all domestic and international flying performed by UPS. Recognizing the lack of extraterritorical coverage of the RLA, the parties negotiated several provisions ensuring the enforceability of that part of the contract concerning wholly international flights. However, UPS also insisted and obtained a provision in negotiations allowing it to handle international flights with non-IPA represented crewmembers "... if there is any other legal bar to the utilization of Association crewmembers." One such potential bar discussed during negotiations was the laws of the foreign country in which future international flights might operate. H.R. 4957, if enacted,

would unnecessarily create a conflict with regard to whether the RLA or the foreign countries laws apply. The conflict created by H.R. 4957 could easily result in disagreements between the parties as to the scope and meaning of the above-quoted contract provision.

6. An argument has been made that this amendment is needed to ensure the enforceability of collectively bargained provisions on international flights. From a legal perspective, this is simply not true. The UPS and IPA collective bargaining agreement is a perfect example. The parties through several novel provisions have been able to ensure the binding effect and enforceability of the contract's provisions on work performed outside the domestic United States without any amendment of the RLA. This same option exists for any other air carrier and labor organization desiring to reach such a result through voluntary collective bargaining. Further, although H.R. 4957 would have the effect of making collectively bargained provisions on foreign flights enforceable under the RLA, it would, as proposed, have a much broader effect.

7. Finally, from a legal standpoint it is difficult to conceive why there is a need to amend the RLA to apply outside the United States when the National Labor Relations Act, 29 U.S.C. Section 151 et seq., has been held not to have extraterritorial application. See, McCulloch v. Sociedad National de Mouneros de Honduras, 372 U.S. 10 (1963). The proposed amendment of the RLA would extend U.S. labor laws to only one group of employees working outside the United States, i.e. flight crewmembers. From a legal

and practical standpoint, it makes no sense why this one small group of employees would be treated differently than employees of all other U.S. corporations who are engaged in foreign operations.

Thank you for the opportunity to present the foregoing analysis of H.R. 4957.

Sincerely,

Tony C. Coleman

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